

1
2 UNITED STATES BANKRUPTCY COURT
3 NORTHERN DISTRICT OF CALIFORNIA

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5 In Re:) Case No. 19-30088
6 PG&E CORPORATION AND PACIFIC) Chapter 11
7 GAS AND ELECTRIC COMPANY,) San Francisco, California
8 Debtors.) Tuesday, December 17, 2019
9) 10:00 AM
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MOTION FOR RELIEF FROM STAY
FILED BY PLAINTIFF'S
EXECUTIVE COMMITTEE [4875]

MOTION FOR RELIEF FROM STAY
FILED BY TODD HEARN [4820]

MOTION FOR RELIEF FROM STAY
FILED BY GEORGE VLAZAKIS
[4846]

DEBTORS' MOTION PURSUANT TO
11 U.S.C. SECTIONS 363(B) AND
105(A) AND FED. R. BANKR. P.
6004 AND 9019 FOR ENTRY OF AN
ORDER (I) AUTHORIZING THE
DEBTORS AND TCC TO ENTER INTO
RESTRUCTURING SUPPORT
AGREEMENT WITH THE TCC,
CONSENTING FIRE CLAIMANT
PROFESSIONALS, AND
SHAREHOLDER PROPONENTS AND
(II) GRANTING RELATED RELIEF
[5038]

21 TRANSCRIPT OF PROCEEDINGS
22 BEFORE THE HONORABLE DENNIS MONTALI
23 UNITED STATES BANKRUPTCY JUDGE
24
25

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I N D E X

RULINGS:	PAGE	LINE
Motion for relief from stay granted	59	23
Restructuring support agreements approved	302	7

PG&E Corp., Pacific Gas & Electric Co.

1 SAN FRANCISCO, CALIFORNIA, TUESDAY, DECEMBER 17, 2019, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: All rise. Court is now in session. The
5 Honorable Dennis Montali presiding.

6 THE COURT: Good morning, everyone.

7 IN UNISON: Good morning, Your Honor.

8 THE CLERK: Matter of PG&E Corporation.

9 THE COURT: Mr. Tsekerides, you're in the first chair.
10 Are you in charge today?

11 MR. TSEKERIDES: Just for the undercard. So we have
12 three lift-stay motions. The Ghost Ship, I believe, through
13 agreement, is going to go first and then one from Mr. Hearn.

14 THE COURT: Right.

15 MR. TSEKERIDES: And then Vlazakis.

16 THE COURT: And you'd like to have me take those three
17 in order?

18 MR. TSEKERIDES: If that would please the Court, yes.

19 THE COURT: Okay. So let me -- okay, I'll do that.

20 MR. TSEKERIDES: Great.

21 THE COURT: One second. For today's calendar, I don't
22 know whether we'll run or not long, but I know a number of you
23 need to be in Judge Donato's court at 1. And if we're not
24 finished, I will break no later than 12:30 and then resume a
25 few minutes -- maybe fifteen minutes after Judge Donato ends.

PG&E Corp., Pacific Gas & Electric Co.

1 If we finish before then, obviously that's not a matter.

2 So with that, I'll ask the clerk to call the calendar
3 starting with the Ghost Ship fire motion.

4 MR. TSEKERIDES: And I think it's their motion, so
5 they'll go first.

6 THE COURT: It is. And the gentleman that asked to be
7 heard out of order, are you here? Yes. Okay.

8 Well, let's -- is your counsel with you?

9 MS. COSTIN: I represent Todd Hearn, and we've agreed
10 that the Ghost Ship can be heard first.

11 THE COURT: Right, but we have a request from one
12 counsel to be heard.

13 Well, let's get the appearance. Who's appearing for
14 the moving party? Good morning.

15 MS. PINO: Good morning, Your Honor. Estella Pino, of
16 Pino & Associates, on behalf of the executive committee in the
17 Ghost Ship litigation.

18 Your Honor, our motion has been joined in and
19 supported by the TCC. And given the opposition and the issues
20 raised in the opposition, relative to the restructuring support
21 agreement with the TCC, we're going to have Mr. Julian address
22 those issues first, and then we'll take up the balance of the
23 arguments. Is that all right with the Court?

24 THE COURT: That's fine.

25 MS. PINO: Thank you, Your Honor.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Good morning, Mr. Julian.

2 MR. JULIAN: Good morning, Your Honor. Robert Julian
3 of Baker & Hostetler, appearing on behalf of the official tort
4 committee.

5 Your Honor, PG&E's opposition to the motion for relief
6 from stay for the Ghost Ship claimants alleges that relief from
7 stay for Ghost Ship is flatly inconsistent with the resolution
8 trust and plan that the TCC and the fire claimants negotiated
9 with the debtors and equity, with Judge Newsome's help, who I
10 believe is in the court today. And I'd like to point out the
11 background of why that is not true and address the three legal
12 arguments of why, legally, relief from stay benefits not only
13 Ghost Ship but the wildfire victims.

14 This is an important day in this bankruptcy case. The
15 75,000 wildfire victims are much closer to obtaining their
16 distributions in this case because the 13.5 billion in asset
17 claims that have been assigned have been agreed to by the
18 debtor and equity. The resolution trust has been set up for
19 that in the plan. But Your Honor, the Ghost Ship --

20 THE COURT: But the details are not --

21 MR. JULIAN: Right.

22 THE COURT: -- known. Okay.

23 MR. JULIAN: But the Ghost Ship claimants are exactly
24 where they were before the settlement, and in fact they're a
25 little bit behind where they were. This is not a good day for

PG&E Corp., Pacific Gas & Electric Co.

1 the Ghost Ship claimants.

2 As the papers show, there's plenty of insurance to go
3 around for the only claimants against the 2016 policy of PG&E.

4 THE COURT: Well, is there plenty? I mean, there's
5 insurance, but is there plenty? How do we know what the
6 definition of "plenty" is? There's a deductible of some
7 substantial amount, and then beyond that, I don't know if -- go
8 ahead, but I mean, "plenty" is a relative term, right?

9 MR. JULIAN: Well, I know the number.

10 THE COURT: Okay.

11 MR. JULIAN: And there's no dispute that the Ghost
12 Ship claimants, in their papers, have essentially shown that
13 they want to make a policy limits demand.

14 So a policy limits demand is a red-letter day in tort
15 litigation, Your Honor, because it says that the plaintiffs,
16 here seventy plaintiffs, are agreeing to take whatever the
17 limits are that they share with the Valero refinery who Your
18 Honor gave relief from stay to go against the same policy.
19 Those are the only claimants that the debtor and the TCC knows
20 about against PG&E. And any good fiduciary -- which PG&E is a
21 fiduciary, and the trust would be a fiduciary -- would simply
22 turn to the insurance carrier and say: get us out of this
23 case; pay your limits. And that's what should be going on
24 here.

25 So let me go over the background a little bit. By the

PG&E Corp., Pacific Gas & Electric Co.

1 way, before I --

2 THE COURT: Just clarify one thing that you've said,
3 and maybe I missed it in the papers. Are the moving parties
4 agreeing to limit their recovery to the insurance?

5 MR. JULIAN: They said that their claims are within
6 the insurance.

7 THE COURT: Well, but that's not what I asked.

8 MR. JULIAN: I'll let them address that, Your Honor.
9 I just --

10 THE COURT: I mean, I didn't see it in the papers, so
11 somebody needs to make sure that is the deal if that is the
12 deal.

13 MR. JULIAN: I'll let them address that, Your Honor.

14 THE COURT: Okay.

15 MR. JULIAN: But actually, before I do go on, I would
16 like to introduce two of our members from Ghost Ship who are
17 here today: Sue Slocomb --

18 THE COURT: Good morning.

19 MR. JULIAN: -- is here.

20 THE COURT: Thank you for coming, Ms. Slocomb.

21 MR. JULIAN: She lost her thirty-two-year-old
22 daughter, Donna Kellogg, in the fire a few years ago.

23 And with me today is Sam Maxwell, here in court with
24 his parents --

25 THE COURT: Good morning, Mr. Maxwell.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. JULIAN: -- Bill and Wendy. Sam was one of the
2 last to get out of the fire, breathing the air, and it's
3 incapacitated him for life. And their presence on our
4 committee is a daily reminder of the problems that the Ghost
5 Ship claimants have getting to payment. And so that's why
6 we're here today.

7 Your Honor, one of the statements made by PG&E in
8 their papers was that the Ghost Ship claimants could have done
9 this earlier. And I think what they did is they respected the
10 standard practice in a case such as this, which you recognized
11 in May in your decision on Valero, which is it was simply too
12 early.

13 When you granted relief from stay for Valero to go
14 against PG&E on that refinery's fire damages, the Ghost Ship
15 claimant's executive committee got together and decided,
16 inasmuch as you had said the time was right for Valero to go
17 forward and seek recovery against that insurance policy,
18 essentially, it was only a matter of fairness for them to go
19 forward too, and they filed their motion and the TCC joined.

20 THE COURT: You don't remember that Valero got sent
21 away the first time around.

22 MR. JULIAN: I do.

23 THE COURT: Okay.

24 MR. JULIAN: On the ground that it was too early.

25 The Ghost Ship claimants, including our member Sam

PG&E Corp., Pacific Gas & Electric Co.

1 Maxwell, need the cash now, not later.

2 Here's what the PG&E is suggesting happen. PG&E is
3 suggesting that because it would be burdensome for them to look
4 at interrogatory answers in their own documents to defend this
5 case, that this case be channeled, which it will be, to the
6 resolution trust, where a new trustee, who knows nothing about
7 PG&E's business, will take over the same documents and try to
8 make sense of this and work with the insurance company, and
9 where that trustee will do exactly what PG&E would do, tender
10 to the insurance company, and at that point, it's the insurance
11 company's financial liability; they will make all the
12 decisions, Your Honor. And the insurance company's float their
13 money; they do not pay until there's a trial date.

14 THE COURT: Well, we're circling back to the question
15 that you couldn't answer, and that is: do the plaintiffs limit
16 their recovery to the insurance? And I understand you're going
17 to ask somebody else to answer that, but if they don't, then
18 we're back to the question of the trust, right?

19 MR. JULIAN: Correct.

20 THE COURT: All right.

21 MR. JULIAN: And so the rest of the trust
22 beneficiaries, the wildfire victims, I believe their lawyers
23 would take the position that it's their interest to have a
24 policy limits demand whereby the Ghost Ship claimants are
25 agreeing to proceed against the insurance.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Well, I don't disagree with you. If
2 there's any recovery from an insurer, whether it's one dollar
3 or the policy limits, that's some relief from the trust
4 otherwise, of course, right, dollar for dollar.

5 MR. JULIAN: Correct.

6 THE COURT: Right? Okay. But one of the things that
7 confuses me -- maybe you can help me, but maybe you don't want
8 to tell me about what was the product of the mediation, but if
9 I got the history of this issue in Ghost Ship, in the first
10 version of the plan of the debtors, but also the alternate
11 plan, the Ghost Ship claims passed through, which to me means
12 they rise or fall on their own merits apart from any trust.

13 Then along comes the RSA that's been negotiated, and
14 it seems that, as I read the papers, the Ghost Ship recovery's
15 back into the trust. So one of the things that I've struggled
16 in my mind today was: can I even make a ruling on the Ghost
17 Ship motion until I find out what's the fate of the RSA, given
18 the last four days, including last night's development?

19 So you tell me, if I were to grant relief from stay --
20 and let's assume that there may be -- first of all, no
21 liabilities been established, but if liability is established,
22 at least above the deductible, there's an insurance. But what
23 happens after that? I mean, where do I -- what happens if the
24 RSA's approved, and what happens if it's not approved? Where
25 do we come out on that?

PG&E Corp., Pacific Gas & Electric Co.

1 MR. JULIAN: If the RSA is approved, we still have a
2 confirmation hearing months later.

3 THE COURT: Right.

4 MR. JULIAN: And if there's relief from stay, the
5 Ghost Ship claimants would go against PG&E, which is really
6 going against their insurance company.

7 THE COURT: Right.

8 MR. JULIAN: So PG&E, in my view, is out of it; they
9 have to handle some discovery.

10 THE COURT: But what happens if there is no agreement
11 by the plaintiffs and Ghost Ship to limit their recovery to the
12 insurance? That's what I don't know. In other words, so you
13 tell me -- again, if you think we should defer that question
14 until someone can answer it, fine. I tell you, this is a much
15 easier question to answer if the plaintiffs agree the recovery
16 is limited to insurance.

17 MR. JULIAN: I agree. I read their papers to say
18 they're making a policy limits demand. I'm going to let them
19 argue that.

20 THE COURT: And what are you looking at? Maybe I
21 missed it in the motion.

22 MR. JULIAN: I think paragraphs 23 and 30 of Ms.
23 Alexander's declaration.

24 THE COURT: Well, in 23, she says she's informed that
25 there's ample insurance.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. JULIAN: Hold on, I may --

2 THE COURT: Pardon? What?

3 MR. JULIAN: Yes, go ahead, Your Honor.

4 THE COURT: Well, I'm just summarizing how paragraph
5 23 begins. And you said the other?

6 MR. JULIAN: 30.

7 THE COURT: 30? I mean, if Ms. Alexander's here, she
8 can clarify that.

9 MR. JULIAN: 30 says there's ample insurance to cover
10 the claims. She knows what she's doing.

11 THE COURT: I know she knows what she's doing. Of
12 course she does. But lots of lawyers come to this Court and
13 ask for relief from stay and start out by saying: and we'll
14 limit our recovery to the policy.

15 Ms. Alexander, good morning.

16 MS. ALEXANDER: Good morning.

17 THE COURT: And I recognize you. Just state your name
18 for the record, though.

19 MS. ALEXANDER: Mary Alexander. Good morning, Your
20 Honor. I thought it might be helpful --

21 THE COURT: So what's the answer to that question?

22 MS. ALEXANDER: -- yes, to help answer that question.

23 THE COURT: Yeah.

24 MS. ALEXANDER: Yes.

25 THE COURT: I mean, it's very critical, obviously.

PG&E Corp., Pacific Gas & Electric Co.

1 MS. ALEXANDER: Right, yes. The plaintiffs and Ghost
2 Ship are willing to limit their recovery to the total tower of
3 the insurance policies for the 2016 year.

4 THE COURT: So that means, if the jury or some other
5 way there is a large recovery that exceeds the policy limits,
6 that there's no recovery from the debtor.

7 MS. ALEXANDER: That's correct.

8 THE COURT: I'll leave aside the deductibles that come
9 before the policy kicks in.

10 MS. ALEXANDER: Right.

11 THE COURT: That's your understanding, and that's what
12 they're prepared to do?

13 MS. ALEXANDER: Yes, I just want to be clear it's
14 policies. There is a tower.

15 THE COURT: Okay. But let's --

16 MS. ALEXANDER: Yes.

17 THE COURT: -- put it in simple terms. Somebody
18 called insurance company or companies would pay the bill; the
19 debtor would not.

20 MS. ALEXANDER: Correct.

21 THE COURT: Right?

22 MS. ALEXANDER: Correct.

23 THE COURT: Okay. Thank you for clarifying that.

24 MR. JULIAN: So Your Honor, the real party-in-interest
25 here, in a policy limits demand case, is the insurance company.

PG&E Corp., Pacific Gas & Electric Co.

1 We ought to be doing everything we can to place the burdens on
2 the insurance company and away from PG&E and the resolution
3 trust. We ought not saddle the resolution trust with this, or
4 PG&E. And secondly, they've been waiting three years. Sam --

5 THE COURT: No, I understand they've been waiting
6 three years. And again, one of the frustrations is that -- and
7 though I'm very aware of the timing, but I don't know how even
8 granting relief from stay, and even if the matter goes to a
9 jury in the county court, where it translates to in recovery
10 from the debtor. If it's a recovery from insurer, that's a
11 different story, obviously. But that wasn't clear until now.

12 MR. JULIAN: Thank you. Yep, I agree.

13 Secondly, you've allowed Valero to proceed, again,
14 against PG&E and the insurance policies. And we think it's
15 fundamentally fair that all claimants be permitted to proceed
16 at the same time. Right now a refinery has preference --

17 THE COURT: Well --

18 MR. JULIAN: -- over Sam Maxwell.

19 THE COURT: -- Mr. Julian, that's not quite the way it
20 was presented. If I had Mr. Maxwell and the other victims and
21 the refinery side by side, maybe it would have come out
22 differently --

23 MR. JULIAN: I understand.

24 THE COURT: -- but I think to -- I only am supposed to
25 respond to requests. And today --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. JULIAN: This is not about you, Your Honor.

2 THE COURT: Okay.

3 MR. JULIAN: This is about --

4 THE COURT: Okay.

5 MR. JULIAN: Your Honor, let me be clear. Let me
6 clarify.

7 THE COURT: Okay.

8 MR. JULIAN: PG&E's response to the Valero continued
9 motion in September was a stipulation.

10 THE COURT: Well, a stipulation to go to mediation, if
11 I recall.

12 MR. JULIAN: It's a stipulation to go to mediation.

13 THE COURT: Right.

14 MR. JULIAN: And if mediation fails, which it has,
15 relief from --

16 THE COURT: Well, I don't know that. I'll take your
17 word for it, but I don't know that.

18 MR. JULIAN: Valero refineries -- Mr. Weissmann (ph.),
19 did you raise your hand? Valero Refinery's counsel is here and
20 can confirm for the Court, as he told me moments ago, mediation
21 has failed, and the stipulation, docket number 3815, states at
22 paragraph 5 -- it's a stipulation between Valero and PG&E: "In
23 the event that the mediation fails to result in a settlement of
24 all claims in the district court action, Valero's motion shall
25 be deemed granted, without further order of the Court, to allow

PG&E Corp., Pacific Gas & Electric Co.

1 the completion of pre-trial proceedings, trial, post-trial
2 motions, and any appellate proceedings in or in connection with
3 the district court action."

4 THE COURT: Well, but unlike the Ghost Ship situation,
5 I don't recall and don't think that the Valero stipulation --
6 and I really don't want to get bogged down on it -- is limited
7 to some policy limits. The point is -- and maybe it's a
8 nonissue.

9 But here's a question for you, and "you", not Ms.
10 Alexander, but you in your role as negotiating whatever came
11 about with the RSA, do I assume that, if the RSA gets passed
12 today, that it should itself be amended to say that Ghost Ship
13 is simply not part of this whole analysis; it's just out of the
14 trust? Isn't that --

15 MR. JULIAN: I can't say that. I didn't negotiate
16 that term. That was between --

17 THE COURT: But isn't that consistent? Wouldn't that
18 be what has to be conceptually -- conceptually; that's all I'm
19 getting. So whether it's any victim, of any size or shape, in
20 Camp or Tubbs or elsewhere, they are not sharing the recovery
21 with anything that the Ghost Ship --

22 MR. JULIAN: Correct.

23 THE COURT: -- claimants may recover. And that, to
24 me, is what's important.

25 MR. JULIAN: Correct. And let me explain to you my

PG&E Corp., Pacific Gas & Electric Co.

1 view of how that would work. PG&E hotly disputes liability in
2 this case.

3 THE COURT: Correct.

4 MR. JULIAN: I believe any trustee is going to have
5 his hands tied. The trustee is going to have to dispute
6 liability -- any resolution trustee, dispute liability, and
7 send it off to state court and allow the insurance company and
8 the Ghost Ship claimants to battle it out. Why put them
9 through the delay of waiting until August to start that
10 litigation, or September of next year, when they can start now?

11 THE COURT: Well, the Ghost Ship fire is much
12 different, obviously, for any number of reasons, and there's no
13 point in debating why it's different. It's different. But
14 every claim that doesn't get resolved by mediation or metrics
15 or formulas has to get resolved somewhere else. And until Ms.
16 Alexander clarified what she did, it still goes into the pot,
17 if you will, the thirteen-and-a-half-billion-dollar pot.

18 If the Ghost Ship motion is granted today and the
19 Ghost Ship trial goes forward, whether it's in May or some
20 other date, and PG&E is found to be liable at all, the recovery
21 for the victims from PG&E are simply outside of the trust and
22 outside of any provision that's dealt with even in the plan,
23 right?

24 MR. JULIAN: Right.

25 THE COURT: So even a plan -- even if there was no

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1 trust and the company said we are going to deal with Ghost Ship
2 liability on our own as though there is no bankruptcy, that has
3 an asterisk meaning, but the insurance companies will have to
4 pay above the deductibles, right?

5 MR. JULIAN: If the SIR is enforced while the
6 company's in bankruptcy. It's a solvent case. I know the
7 arguments. But yes, there is that issue of the deductible.

8 THE COURT: Well, I understand the deductible, but --

9 MR. JULIAN: The SIR. Now, they said --

10 THE COURT: Well, I know what SIR means, but why don't
11 you explain it for the benefit of people that aren't so
12 familiar. What does that mean to you, in your terms, SIR?

13 MR. JULIAN: I think there's a self-insured retention
14 or a deductible of --

15 THE COURT: Right.

16 MR. JULIAN: -- ten million.

17 THE COURT: Right.

18 MR. JULIAN: And what they haven't told you is there's
19 a -- whatever it is, 1.7 drawn down on Ghost Ship, but they
20 haven't explained --

21 THE COURT: No, I think they have, actually, and I
22 think, in their response, they did indicate something in the
23 neighborhood of eight million dollars. Mr. Tsekerides can
24 clarify that when he comes up to the podium.

25 But Mr. Julian, let's get back to the bigger question.

PG&E Corp., Pacific Gas & Electric Co.

1 If a jury comes in with a hundred million dollars against PG&E
2 in the Ghost Ship trial, and the insurance limits are fifty
3 million or sixty million or ten million, the rest of that
4 matter is gone; there's no recovery, right?

5 MR. JULIAN: Under the --

6 THE COURT: No recovery if the debtor confirms a plan
7 and the Ghost Ship is left to fend for itself, the plaintiffs
8 accept, to the extent they've agreed to recovery of deductible
9 plus insurance.

10 MR. JULIAN: Correct.

11 THE COURT: Right?

12 MR. JULIAN: Correct.

13 THE COURT: I want to make sure that's very, very
14 clear.

15 MR. JULIAN: That's how I see it.

16 THE COURT: Okay. Well, and more importantly, that's
17 how Ms. Alexander and other lawyers representing the Ghost Ship
18 plaintiffs do, because I don't want to make a decision here
19 that is misinterpreted.

20 But you and I both know when a moving party says I
21 will look only to insurance -- again, forget deductibles for
22 the moment -- that means a lot. And hopefully for the victims,
23 if they recover a judgment, they'll be paid promptly by the
24 insurer. But if insurer doesn't pay or can't pay or the award
25 is greater, there is no recovery from the company if it

PG&E Corp., Pacific Gas & Electric Co.

1 confirms its plan.

2 MR. JULIAN: That's the way I understand it.

3 THE COURT: Okay.

4 MR. JULIAN: So for the three reasons, Your Honor,
5 first, that they've waited long enough, we shouldn't put them
6 off until later in the resolution trust. That's number one.

7 Number two, Valero has relief from stay and is
8 proceeding. Their claim is seventy million, was I understand,
9 Valero's claim.

10 And three, the burdens on the resolution trustee would
11 be even greater than the burdens on PG&E because he would have
12 to start from new with the insurance company and looking at the
13 evidence to contest liability. Right? PG&E has the documents.

14 THE COURT: Well, again, let's go back to timing. If
15 I denied today's motion but grant it at some date in the
16 future, it's the same outcome unless the plaintiff changed
17 their strategy. But I would -- that's for another day. If I
18 grant it today, they, through their representative, have
19 expressed themselves. And if I were to deny the motion today,
20 for whatever reason, but revisit it later, I would assume that
21 plaintiffs would take the same point of view. But they're not
22 bound to. I'm not suggesting that it's an open-ended offer,
23 but it's an offer that they made or a position that they've
24 just articulated through their representative.

25 MR. JULIAN: Yeah.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Okay.

2 MR. JULIAN: You know, Your Honor, most importantly, I
3 think the -- I understand the debtors have agreed to mediation.
4 In this case, those Ghost Ship claims should be sent to
5 mediation. I'll leave that up to them.

6 THE COURT: Well, that's for the trial court to do if
7 I grant relief from stay. And if I deny relief from stay, then
8 I guess the question you need to help me with is: why is this
9 different from Tubbs? I mean, I made a decision for Tubbs when
10 liability was not conceded, not even causal, you'll recall.
11 And I made a decision to facilitate at least one piece of the
12 very difficult estimation process.

13 You were persuasive, in part, in that decision
14 making -- me making that decision. But why wouldn't this be
15 revisiting the same question? I mean, it seems to me it's not
16 appropriate to do it without this insurance clarification. I
17 mean, what would happen -- let's try it a different way.
18 Suppose Ms. Alexander were not able to make that concession,
19 why would I depart from what I did when I granted relief from
20 stay in Tubbs for the purpose of pinning down the estimation?

21 MR. JULIAN: Your Honor, I haven't analyzed that
22 because it's so clear here. There's 900 million dollars of
23 insurance, Your Honor; Valero's 70 million.

24 The idea of this debtor protecting that insurance
25 because they don't want bad publicity is an anathema to me.

PG&E Corp., Pacific Gas & Electric Co.

1 But I'm going to answer your question. There's 2.2 billion
2 dollars of liability insurance that covered Tubbs, Camp, and
3 the other twenty-one fires. That insurance, under the plan, is
4 being paid to PG&E. PG&E and equity is coming up with the cash
5 to put into the trust. The answer is that Tubbs and Camp fire
6 claims dwarfed the insurance available.

7 THE COURT: Right.

8 MR. JULIAN: So the deal there was insurance goes to
9 the debtor, debtor pays the cash to the trust.

10 THE COURT: Right. Right.

11 MR. JULIAN: Here the insurance dwarfs these claims,
12 and it is simply unfair to have these folks have to wait to
13 deal with the resolution trustee when that insurance is sitting
14 there and the insurance companies are making the float by not
15 paying out any money. And even defense costs --

16 THE COURT: Well, I don't disagree with that, but what
17 I'm getting at is that this is the first time, I think, that
18 the focus has been only on insurance and not --

19 MR. JULIAN: Correct.

20 THE COURT: -- on, one, the very important point of
21 compensating victims if the debtor is culpable, and secondly,
22 facilitating the bigger picture of estimation, as complex as it
23 is, which is why my decision was made in Tubbs. But it wasn't
24 a question presented to me for the Ghost Ship fire.

25 MR. JULIAN: Well, first of all, if you may recall,

PG&E Corp., Pacific Gas & Electric Co.

1 and I think we all forget it, the debtor left Ghost Ship out of
2 the estimation motion, not in the estimation motion.

3 THE COURT: Because they were going to pass through.

4 MR. JULIAN: Right.

5 THE COURT: That's my point; that's how this has
6 evolved.

7 MR. JULIAN: But they were passing it through, Your
8 Honor, for a reason. Come on. The reason was because they had
9 plenty of insurance.

10 THE COURT: Mr. Julian, I'd like to think of it a
11 different way. If there hadn't been the 2015, 2017, and 2018
12 wildfires, the company wouldn't have filed bankruptcy. But the
13 Ghost Ship fire happened for whatever reason it happened, and
14 PG&E is or isn't liable. But I don't think Ghost Ship, by
15 itself, drove PG&E into bankruptcy. It may be, but I doubt it
16 because of the insurance and because of other things.

17 And so it seems to me that when the company filed its
18 plan originally, and Ghost Ship passed through, that was
19 consistent with the notion of what I just described. And why
20 the bankruptcy? Because of the Camp and Tubbs and other fires.
21 That's all.

22 MR. JULIAN: I get it.

23 THE COURT: We are where we are, and we have to deal
24 with what we have to deal with. Look, let me hear from the
25 other parties and --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. JULIAN: Thank you, Your Honor.

2 THE COURT: -- and then I'll hear from the debtor on
3 this. Okay?

4 Ms. Pina, do you want to be heard further on the
5 motion? I mean, the motion's pretty well identified, and I
6 really need to know what the debtors' position is on the
7 insurance issue.

8 MS. PINO: Yes, Your Honor. I did want to clarify
9 that we -- in our motion, I thought that -- English is my
10 second language, and I apologize if I did not make it clear,
11 sir, but we were seeking relief from the automatic stay to
12 establish liability, obtain judgment, and collect any judgments
13 obtained against the debtors, to the extent of available
14 insurance proceeds. And we filed a separate motion that just
15 stated what the relief we seek, and I just wanted to make that
16 clarification to the Court. And I'm so glad that Ms. --

17 THE COURT: Well, I'll not quarrelling with your
18 language. I've known you, and you've appeared in many cases
19 before me, and I've never had one doubt about understanding
20 exactly what you said. But I just simply didn't recall seeing
21 in here, and if it's in here and I missed it, then I missed it.
22 But --

23 MS. PINO: I actually filed a separate motion, Your
24 Honor, which is kind of what we tend to do in the Eastern
25 District, to just very succinctly state the relief we sought.

PG&E Corp., Pacific Gas & Electric Co.

1 And you're right, I would reserve my time for rebuttal
2 to the debtor. And I join in Mr. Julian's comments. And I
3 think it's very telling that the TCC and the wildfire victims
4 support our motion.

5 THE COURT: Well, apart from doing the right thing for
6 the benefit of your constituents, they also do the right thing
7 to relive any pressure on the settlement trust, if there is
8 indeed going to be a settlement trust.

9 Let me ask you a question more specific to the
10 question in hand. As I recall, there's been a motion on this
11 Friday to continue the matter, by the City of Oakland. Is that
12 being opposed by the plaintiffs?

13 MS. PINO: That was opposed by the plaintiffs, Your
14 Honor, but I have been authorized by the executive committee to
15 represent to the Court that, if relief from stay is granted,
16 the executive committee will request a continuance of that
17 hearing to allow PG&E to voice its opinion as to when this
18 trial should take place.

19 THE COURT: So what you're saying is if I grant relief
20 from stay, PG&E will have an opportunity to go to Superior
21 Court and argue, if it chooses to argue for a continuance.

22 MS. PINO: For a continuance and weigh in on what it
23 believes would be an appropriate date for the trial.

24 THE COURT: Well, but the --

25 MS. PINO: This is the perfect opportunity to do that.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: But the flip side is if I deny today's
2 motion. Judge Seligman would just have to make a decision on
3 whether he's going to go forward on the trial and schedule for
4 the other defendants, right?

5 MS. PINO: That's correct, Your Honor. I think that
6 if you deny this motion today, what we're facing under the
7 amended plan is that the plan itself is an objection to the
8 claim, and it doesn't get resolved --

9 THE COURT: Wait, I don't understand that.

10 MS. PINO: Yes.

11 THE COURT: You have to tell me that again.

12 MS. PINO: Okay.

13 THE COURT: How is the plan an objection to the claim?
14 The claim is deemed allowed unless objected to, so --

15 MS. PINO: No, actually, Your Honor, if you look at
16 the amended plan that was filed by PG&E --

17 THE COURT: Well, I've been looking at a lot of things
18 lately.

19 MS. PINO: I bet you have.

20 THE COURT: Okay. So --

21 MS. PINO: But let me make this easy for you. The
22 plan provisions actually state that --

23 THE COURT: Mr. Tsekerides, I have to ask you not to
24 talk on -- I mean, if you want a moment, I'll give you a
25 moment, but you're coming up on the microphone here.

PG&E Corp., Pacific Gas & Electric Co.

1 Okay. All right. Go ahead, Ms. Pino.

2 MS. PINO: -- that the plan states, at section 7.1,
3 objections to claims, that the plan shall be deemed an
4 objection to such claims, the wildfire victim claims, which now
5 include the Ghost Ship, to such claims under Bankruptcy Rule
6 3007. So --

7 THE COURT: Well, they didn't tell me that. But sure,
8 the plan says what it says, but it's a nonissue, isn't it? In
9 other words, the debtor has a right to object to a claim even
10 if the claim is going to be defended on the merits somewhere
11 else, I would think. But I don't have to worry about that
12 detail. I don't think -- well, let's try it this way. Do you
13 believe that that amended plan, that was just filed a few days
14 ago, is the equivalent of a claim objection?

15 MS. PINO: Under the rule, no.

16 THE COURT: Okay. So what does the --

17 MS. PINO: Yeah.

18 THE COURT: So what does the law say about your
19 client's claim?

20 MS. PINO: My client's claim is allowed unless --

21 THE COURT: Deemed allowed.

22 MS. PINO: -- objected to --

23 THE COURT: Deemed allowed, right.

24 MS. PINO: -- and --

25 THE COURT: Okay.

PG&E Corp., Pacific Gas & Electric Co.

1 MS. PINO: But of course my client's claims are
2 unliquidated.

3 THE COURT: Well, but still an objection triggers the
4 "deemed allowance" concept --

5 MS. PINO: Concept.

6 THE COURT: -- and rebuts it. But that's not the
7 point. Do you share and agree, in your role as counsel for the
8 committee, executive committee, with Ms. Alexander's
9 representation that the executive committee, as a committee,
10 understands that relief from stay, if granted, limits your
11 recovery to the deductible plus any recovery from insurance and
12 not anything in the trust, if the trust goes into place, or
13 against the reorganized company going forward?

14 MS. PINO: I better agree; I take my orders from them.

15 THE COURT: I'm not trying to --

16 MS. PINO: I think that --

17 THE COURT: -- trap you. I'm trying to make sure --

18 MS. PINO: No, no, I think that --

19 THE COURT: I'm trying to make sure that if I issue an
20 order that it will say that, and the order will be binding on
21 everyone, that that is the outcome. And that, again, is not
22 unusual for simple cases, for automobile cases and slip-and-
23 fall cases, where all the moving party wants to do is to go
24 against insurance. And frequently we -- and I'm sure you do
25 this in your practice; courts grant relief with that proviso.

PG&E Corp., Pacific Gas & Electric Co.

1 So --

2 MS. PINO: That --

3 THE COURT: -- it's consistent with your
4 understanding?

5 MS. PINO: It is consistent with my understanding of
6 the relief sought and the instructions I have from the
7 executive committee. And you're right, Your Honor, we see this
8 more in the concept of a Chapter 7, not so much in a --

9 THE COURT: Right.

10 MS. PINO: -- Chapter 11. But as Mr. Julian
11 represented, the amount of the insurance for 2016 is such that
12 the executive committee felt that it was appropriate and
13 prudent to do that.

14 THE COURT: Okay. Thank you, Ms. Pino. And I'll let
15 you reserve a little -- we're trying to move along here.

16 Is Mr. Kaupp here?

17 MR. KAUPP: Yes, Your Honor.

18 THE COURT: Do you want to be heard, Mr. Kaupp? You
19 asked permission --

20 MR. KAUPP: I do briefly, Your Honor.

21 THE COURT: You asked to appear for your client --

22 MS. PINO: Thank you.

23 THE COURT: -- so I'd like you to be very brief,
24 because we didn't anticipate taking things other than what was
25 on the schedule.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. KAUPP: Thank you, Your Honor. And I --

2 THE COURT: And I appreciate your client coming here.
3 I wish him well in his recovery, and I'm sorry about the fact
4 that he's here in the first place.

5 MR. KAUPP: Thank you. And I'm speaking to the Court
6 today on behalf of the Ghost Ship executive committee and on
7 behalf of Mr. Maxwell, and not in his capacity on the TCC.
8 There are just two things that haven't been mentioned yet that
9 I wanted to say.

10 THE COURT: Wait. Excuse me. Okay, we need your
11 appearance on the record.

12 MR. KAUPP: Gordon Kaupp, K-A-U-P-P, for Sam Maxwell.

13 This Court's order today will have a cascading effect
14 in the Superior Court action. What we want from Judge Seligman
15 on Friday is a realistic trial date. And that's why we're
16 willing to agree to kick that hearing over so that PG&E can be
17 there in order to voice its position as to what a realistic
18 trial date is to give it due process.

19 THE COURT: Well, but if I deny today's motion, I
20 presume Judge Seligman will decide whether he's going to
21 bifurcate and go forward, either on schedule or at whatever
22 deferred time requested by the City of Oakland.

23 MR. KAUPP: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. KAUPP: But if today's motion is denied, and then

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1 it's granted at a later date, what that will effectively do is
2 take any trial date that's in place from Judge Seligman on
3 Friday and kick it off even further --

4 THE COURT: Well, how do you know that? He might
5 bifurcate.

6 MR. KAUPP: He could bifurcate.

7 THE COURT: Unless the plaintiffs decline the
8 invitation.

9 MR. KAUPP: I think what we'd likely see, if trial has
10 not occurred, that PG&E would enter that case and say we need
11 more time.

12 THE COURT: No, but what I'm saying is that if I were
13 to deny today's motion, the plaintiffs will have to decide
14 whether they want the Superior Court to bifurcate and drop PG&E
15 aside and go forward against the other defendants.

16 MR. KAUPP: That's one possibility.

17 THE COURT: They may choose not to do that, or they
18 may choose to do that. I'm mindful of the lack of appeal of
19 putting the plaintiffs through two prosecutions of the same
20 lawsuit. And that's a factor, but it's still a possibility.

21 MR. KAUPP: It is a possibility. It would be a big
22 burden for the plaintiffs. It also could result in
23 inconsistent judgments. It could result in inconsistent
24 damages verdicts. And that could be a real problem.

25 THE COURT: Well, that's true any time we do that when

PG&E Corp., Pacific Gas & Electric Co.

1 there's a bankruptcy. The question is whether it's just an
2 unfair burden to the plaintiffs to have to put them through the
3 prosecution of it twice. That's all.

4 MR. JULIAN: And three years into litigation has been
5 quite a burden for them, and we certainly hope that the Court
6 does lift the stay so we can move forward. I also wanted to
7 address PG&E's argument about prejudice, which I think actually
8 counseled toward lifting the stay sooner rather than later.

9 A lot of their argument is about how parachuting into
10 the state court action today would put them at a significant
11 disadvantage because of how much litigation has happened since
12 January. But the truth of the matter is, if the stay was
13 lifted later, that prejudice would only be greater, and I think
14 that really counsels toward lifting the stay immediately,
15 giving the Ghost Ship plaintiffs the ability to get a realistic
16 trial date from Judge Seligman and to resolve those claims.

17 What we know about PG&E is they really do dispute
18 liability here, as they did in Tubbs. And what we need to do
19 is to get discovery to make our case, in order to resolve those
20 claims, even at mediation. And so what we'll be doing, if
21 there is no stay that's lifted, and we have to wait until the
22 resolution of the bankruptcy -- we will be in a position of
23 then having to litigate those claims.

24 PG&E's position and the insurance carrier's position
25 before the RSA and after the RSA has been the same, and that is

PG&E Corp., Pacific Gas & Electric Co.

1 there's no liability. So we know we're going to have to
2 litigate --

3 THE COURT: Well, PG&E does have a right to take that
4 position, right?

5 MR. JULIAN: They do have a right --

6 THE COURT: Okay, well --

7 MR. JULIAN: -- to take the position, and they're
8 taking the position. And the reality is the Ghost Ship
9 plaintiffs are going to have to litigate these claims and
10 complete discovery. And sooner rather than later is really
11 what's preferred, because there are dependents in the case who
12 have lost parents and who need that money.

13 Mr. Maxwell's family spends over a hundred hours a
14 week doing self-care because they only have an attendant eight
15 hours a day, for seven days a week. Medi-Cal does not cover
16 approximately 6,000 dollars each month of their out-of-pockets.

17 THE COURT: Okay. I want to stop, not because I'm not
18 sympathetic to Mr. Maxwell's situation. But none of this is in
19 the pleadings, and it's not fair to present it now. I'm
20 mindful of it, and I accept it. But I don't want to get into a
21 discussion about whether we have to have that kind of evidence.
22 It's not relevant. I'll make my decision on the way the
23 arguments have been framed and presented.

24 MR. JULIAN: Thank you, Your Honor.

25 THE COURT: Okay? Ms. Alexander, do you want to be

PG&E Corp., Pacific Gas & Electric Co.

1 heard further? I want to not cut you off, but I want to hear
2 from the debtor because --

3 MS. ALEXANDER: Understood.

4 THE COURT: -- I don't know whether we have a major
5 issue or not with his insurance. Go ahead.

6 MS. ALEXANDER: Understood. Thank you, Your Honor.
7 Mary Alexander. And I am the liaison counsel in the civil
8 Ghost Ship case and therefore serve on that executive
9 committee. And I have the honor of representing Sue Slocumb,
10 who serves on the TCC --

11 THE COURT: Okay.

12 MS. ALEXANDER: -- and Sue lost her daughter, Donna,
13 at thirty-two years of age. I do want to just briefly mention
14 that not all of the people who died in the Ghost Ship were
15 young. They were educated. They did not live there -- all but
16 one. They were there that night for a party, and they lost
17 their lives.

18 I do want to reiterate to Your Honor that we are
19 willing to and are agreeing to limit the recovery to the
20 900,000-plus --

21 THE COURT: 900,000?

22 MS. ALEXANDER: -- insurance policies.

23 THE COURT: I think it's more than 900,000.

24 MS. ALEXANDER: 900 million.

25 THE COURT: Yeah.

PG&E Corp., Pacific Gas & Electric Co.

1 MS. ALEXANDER: And for once, that number doesn't
2 start with a B in this case.

3 THE COURT: It's close.

4 MS. ALEXANDER: Right. So we are asking you to lift
5 the stay. The defendants have agreed, to their credit, to
6 mediate with us in January, and --

7 THE COURT: Now, say that again. To do what?

8 MS. ALEXANDER: To mediate --

9 THE COURT: Oh, okay.

10 MS. ALEXANDER: -- with the Ghost Ship plaintiffs --

11 THE COURT: Oh, okay. I was not aware of that.

12 MS. ALEXANDER: -- in January. That's different from
13 our papers, because this has occurred since we filed our
14 papers. They have agreed to mediate in the end of January and
15 agreed to have their insurance carriers there. And so, if by
16 some chance -- I hope you won't, but if you are inclined not to
17 grant the motion with the stay, we would ask that you at least
18 lift it for the purposes of mediation, in that regard.

19 One other point I do want to make is that we have,
20 throughout this year, been serving the defendants, PG&E -- both
21 defendants -- on everything that's happened in the case: all
22 the pleadings, all the requests for documents, interrogatories,
23 all the responding documents, all the motions, everything. And
24 they have access to our document repository.

25 We left all that in place while they have been gone,

PG&E Corp., Pacific Gas & Electric Co.

1 and they monitor the criminal trial every day. They well know
2 what is going on in this case. It's much different than some
3 cases where the debtor has not been provided all that
4 information.

5 So we would respectfully request, Your Honor, that you
6 grant our motion to lift the stay and let these families, who
7 have suffered so much, go back with PG&E to seek compensation.
8 Thank you.

9 THE COURT: Okay, thank you, Ms. Alexander.

10 Mr. Tsekerides?

11 And keep in mind that -- I don't know about what you
12 knew, but what I heard today was the first time it's been
13 clarified about an agreement on limitation. And that seems to
14 me to be quite relevant. So if --

15 MR. TSEKERIDES: Right.

16 THE COURT: -- you can tell me why, in the face of
17 that --

18 MR. TSEKERIDES: Sure.

19 THE COURT: -- I should not just simply grant the
20 motion.

21 MR. TSEKERIDES: Ted Tsekerides from Weil Gotshal for
22 the debtors. It's not in the papers, Your Honor. We didn't
23 see it either, but I appreciate that it was said on the record
24 today. But --

25 THE COURT: But you're aware of it now if you --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. TSEKERIDES: Well, I just heard it --

2 THE COURT: Oh, okay.

3 MR. TSEKERIDES: -- today, yeah, just as you did.

4 THE COURT: All right.

5 MR. TSEKERIDES: So I think there's still two
6 reasons -- at least two reasons why you shouldn't lift the
7 stay, but I did want to address first the points that Mr.
8 Julian made. And I think it's important also for the Court to
9 know, the reason why the claimants haven't been paid yet is not
10 because of PG&E. We didn't try to extend the stay to that
11 case. That case has been going on in state court all the
12 while. We were supposed to go to trial in October of this
13 year, and it didn't happen, but not because of us.

14 So they could have moved to lift the stay to put us in
15 then, and they didn't. The holdup is not because of us. So
16 the fact that they're waiting -- I appreciate it's a burden,
17 but we're not holding up recoveries that they might get against
18 other defendants. So the waiting too long -- I appreciate
19 that, but it's not our fault.

20 Valero, you know, is very different. Valero was just
21 us and them, and here you have fifty-three lawsuits, seventy
22 plaintiffs, over ten defendants. It's a very different case,
23 very complex.

24 THE COURT: But there are, by my count -- and I'm not
25 involved in the case -- there are only two nonindividual

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1 entities, or there are two corporate entities. One's the City
2 of Oakland, and one's the debtor, right? Everyone else --

3 MR. TSEKERIDES: As far as I know.

4 THE COURT: -- they're just individuals?

5 MR. TSEKERIDES: But given --

6 THE COURT: And maybe they have insurance; maybe they
7 don't. I don't know.

8 MR. TSEKERIDES: Right. But given their statement, I
9 think, and what you did in Valero, I mean, one way you could
10 slice this -- and we're not opposed to mediation -- in fact,
11 today we made that clear -- is to not lift the stay today. We
12 have the mediation with the plaintiffs' counsel, the executive
13 committee, and see where we end up.

14 But lifting the stay -- there is still a little over
15 eight-and-a-half million dollars that will come out of pocket
16 of the estate, and for what purpose? If everyone's talking
17 about insurance being there, why are we going to spend money
18 ramping up to get ready for a trial? We've had no discovery.
19 It's nice that people send us documents, but we're not
20 reviewing them, because we don't want to spend the money. Why
21 spend that eight million dollars when we don't have to?

22 Let's have a mediation. Let's see how it happens and
23 then come back to court. But if you left the stay --

24 THE COURT: Something tells me that that eight million
25 dollars will get used up, if not through defense costs, at

PG&E Corp., Pacific Gas & Electric Co.

1 least through the mediation process.

2 MR. TSEKERIDES: Right. But at least we're going
3 towards a mediation process --

4 THE COURT: Well, I understand.

5 MR. TSEKERIDES: -- with the insurers there --

6 THE COURT: I understand.

7 MR. TSEKERIDES: -- and we're putting good money in to
8 try to get a good settlement. But if we don't have a
9 settlement and you lift the stay today, we're going to have to
10 ramp up, and we can't control --

11 THE COURT: But what --

12 MR. TSEKERIDES: -- what happens in state court.

13 THE COURT: I know you can't control, but what's the
14 message I send to Judge Seligman? It's okay to go mediate, but
15 he can't schedule his trial?

16 MR. TSEKERIDES: He can still -- until they file this
17 motion, whatever was happening in state court was happening in
18 state court.

19 THE COURT: And I understand that.

20 MR. TSEKERIDES: So --

21 THE COURT: I understand that.

22 MR. TSEKERIDES: So I don't think you're really
23 sending any message other than, we still have a debtor that's
24 dealing with a lot of things right now.

25 THE COURT: But no, I don't think you're hearing my

PG&E Corp., Pacific Gas & Electric Co.

1 question.

2 MR. TSEKERIDES: Okay.

3 THE COURT: I don't know what arguments are being
4 presented to him by the City of Oakland, but if you simply read
5 the docket, you'd see that it's set to go to trial in May.

6 MR. TSEKERIDES: Correct.

7 THE COURT: Right? And one defendant has asked the
8 court to give it more time. If the judge knows -- and
9 obviously the judge does know that PG&E's in bankruptcy -- if
10 he thinks that PG&E is still stayed, that will influence his
11 decision perhaps --

12 MR. TSEKERIDES: Perhaps.

13 THE COURT: -- or perhaps not. If he knows that the
14 bankruptcy is no longer an impediment, he will make the
15 decision, presumably, the way he should be making it, namely,
16 without regard to the bankruptcy.

17 MR. TSEKERIDES: Right. And my point was that I don't
18 think he's looking at it as the bankruptcy being an impediment.
19 Whatever arguments are being made by the City of Oakland, we
20 have not been involved in that case the entire year. They've
21 been moving along at whatever pace --

22 THE COURT: I understand.

23 MR. TSEKERIDES: -- they're moving along.

24 THE COURT: I got you.

25 MR. TSEKERIDES: He's got to resolve the City of

PG&E Corp., Pacific Gas & Electric Co.

1 Oakland's motion on its merits, whether they're entitled to an
2 extension or not.

3 THE COURT: But how could -- but it's still going to
4 be relevant to his decision. I mean, it's just human nature to
5 think, how can I make a decision without knowing if this very
6 deep-pocket defendant -- and it is a deep-pocket defendant --
7 is going to be in the courtroom or not, and when the trial
8 resumes --

9 MR. TSEKERIDES: Well, to be sure.

10 THE COURT: -- or whenever --

11 MR. TSEKERIDES: Well, I mean, if you lift --

12 THE COURT: -- not resumes -- whenever the trial
13 begins?

14 MR. TSEKERIDES: Well, to be sure, if you lifted the
15 stay, there's no way we could have a trial in May.

16 THE COURT: Well, that's for him to --

17 MR. TSEKERIDES: So I think the only thing that could
18 happen --

19 THE COURT: That's for Judge Seligman to decide,
20 right?

21 MR. TSEKERIDES: Well, but see, that's exactly my
22 point. You should be helping us with that, sending us to
23 mediation, not sort of letting the debtor have to spend eight
24 million dollars --

25 THE COURT: Mr. Tsekerides, you don't push too hard,

PG&E Corp., Pacific Gas & Electric Co.

1 because the argument that the plaintiffs should have known,
2 they could have asked earlier, can be responded by, the
3 defendants clearly should have known; they should have been
4 preparing earlier.

5 MR. TSEKERIDES: Well, why would a debtor defendant be
6 preparing for trial in a case that's stayed?

7 THE COURT: Because --

8 MR. TSEKERIDES: That's the whole point of 362, Judge.

9 THE COURT: Because the debtor is represented by
10 experienced bankruptcy counsel, with an experienced bankruptcy
11 judge, and knows how these things sometimes play out.

12 MR. TSEKERIDES: Well, sometimes, but not over the
13 past few months. Maybe today --

14 THE COURT: I know, but this isn't a collection
15 action. It isn't even a refinery fire. This is a thing
16 involving fifty-three lawsuits and dozens of victims and --

17 MR. TSEKERIDES: But --

18 THE COURT: -- a major tragedy.

19 MR. TSEKERIDES: Fair enough, Judge. But the
20 suggestion that we should have been preparing for a trial
21 during the past year -- I mean, I take issue with that.

22 THE COURT: Okay, you can.

23 MR. TSEKERIDES: Okay, I did.

24 THE COURT: Why should I deny relief from stay? You
25 already made virtually a stipulation that it can go to

PG&E Corp., Pacific Gas & Electric Co.

1 mediation -- not exactly, but virtually. So why not the next
2 step? What difference does it make?

3 MR. TSEKERIDES: Well, I think --

4 THE COURT: All the more reason to have a good result
5 in the mediation.

6 MR. TSEKERIDES: Well, but I'm not sure that that's
7 right, Your Honor. I think, well, one would be the money. I
8 mean --

9 THE COURT: Okay.

10 MR. TSEKERIDES: -- money that doesn't need to be
11 spent --

12 THE COURT: Okay.

13 MR. TSEKERIDES: -- will be spent. And two, people
14 who are currently working on other things and trying to get
15 this bankruptcy, the larger Chapter 11, done -- it's not just
16 outside counsel. You --

17 THE COURT: I don't know. Yeah, I understand. I
18 understand --

19 MR. TSEKERIDES: Yeah.

20 THE COURT: -- your point. And certainly, in some of
21 the other motions, I've heard from in-house counsel and others
22 the things people work. I don't doubt that they're working on
23 it. But look, let's switch topics --

24 MR. TSEKERIDES: Sure.

25 THE COURT: -- a little bit. And let's pretend that

PG&E Corp., Pacific Gas & Electric Co.

1 somehow, between December 17th and June 30th --

2 MR. TSEKERIDES: Um-hum.

3 THE COURT: -- the governor's position and the PUC's
4 position and the AB 1054's position is such that we might have
5 a confirmed plan by the end of May or June. What happens to
6 the Ghost Ship fire then?

7 MR. TSEKERIDES: Well, I mean --

8 THE COURT: That one has to go to trial, right, unless
9 it's mediated to a result?

10 MR. TSEKERIDES: Well, if, as it currently stands,
11 that it's part of the channeling injunction --

12 THE COURT: It's not.

13 MR. TSEKERIDES: Well --

14 THE COURT: Not from what I just heard today.

15 MR. TSEKERIDES: Well, I don't know that that's true,
16 Your Honor. I think that --

17 THE COURT: Well, what is it -- what do you draw --
18 what inference do you draw from two counsel, Ms. Pino and Ms.
19 Alexander -- they confirmed it twice on the record. They'll
20 look only to insurance. So what does that --

21 MR. TSEKERIDES: Well --

22 THE COURT: What's left with the channeling
23 injunction?

24 MR. TSEKERIDES: Well, looking to insurance is
25 different from what process what process it's going to go

PG&E Corp., Pacific Gas & Electric Co.

1 through. So let's say you don't lift the stay. Well, I'll
2 explain why, Your Honor. I mean, you can still have claims
3 going -- you're not going to be looking to the debtor, is my
4 point. They're saying it's insurance. I appreciate that. But
5 you can still have the trustee, and it's no burden, because the
6 trustee is going to be sitting there with the same pot of money
7 that we're sitting with.

8 THE COURT: Why? What is the role with -- if this
9 goes -- if relief from stay is granted, and the plaintiffs
10 agree not to look to the company or the trust, what is the role
11 of the trust trustee, vis a vis the Ghost Ship action?

12 MR. TSEKERIDES: Well --

13 THE COURT: To me, it's --

14 MR. TSEKERIDES: If the --

15 THE COURT: It's different -- okay.

16 MR. TSEKERIDES: If the stay were lifted, you're
17 right. But I'm --

18 THE COURT: No.

19 MR. TSEKERIDES: I'm arguing --

20 THE COURT: Either way.

21 MR. TSEKERIDES: Well, I'm not sure that that's right,
22 Your Honor.

23 THE COURT: No. Well, what am I missing? You just
24 heard two counsel say, we'd like to look only to insurance,
25 plus deductible. So my question to you --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. TSEKERIDES: Well, that's the part -- "plus
2 deductible". I mean, we still have the eight million --

3 THE COURT: Well, that is the eight million, right?

4 MR. TSEKERIDES: Yeah.

5 THE COURT: That's the eight million.

6 MR. TSEKERIDES: It's an SIR, but yeah.

7 THE COURT: And you'll get the debtor's own defense
8 costs -- eat that first, don't they?

9 MR. TSEKERIDES: No, we would have to pay for that.

10 THE COURT: No, I know you have to pay for it, but --

11 MR. TSEKERIDES: But see, we wouldn't have those costs
12 if it was in a trust.

13 THE COURT: Look, let me rephrase my question. If we
14 had a mediation this afternoon in the attorney conference room,
15 and the Ghost Ship plaintiffs agreed to settle with PG&E, most
16 of that eight million probably would still be intact. But --

17 MR. TSEKERIDES: Probably.

18 THE COURT: But if there is mediation or pre-trial
19 after a relief from stay or something, that eight million will
20 be the burning candle concept. It's a burning candle type
21 policy, right? And when the candle's burnt, gone, it's gone.
22 So my question for you is, if PG&E is treating Ghost Ship as a
23 passthrough, why is it part of the trust anymore?

24 MR. TSEKERIDES: Well --

25 THE COURT: In other words, doesn't the RSA get

PG&E Corp., Pacific Gas & Electric Co.

1 amended to say, the Ghost Ship plaintiffs do not participate in
2 the trust because they --

3 MR. TSEKERIDES: Well, we weren't -- Your Honor,
4 again, in fairness, we weren't treating it as a passthrough in
5 the plan that just most recently got filed. That's not -- it
6 was --

7 THE COURT: It was in the first time.

8 MR. TSEKERIDES: -- a passthrough, but it's not in the
9 current one that's on paper right now. And my only point is,
10 if you don't lift the stay, then we, the debtors, are not going
11 to be spending the money. The trustee will be dealing with
12 whatever the trustee's going to be dealing with, and the
13 insurance company will be paying --

14 THE COURT: Okay, let's --

15 MR. TSEKERIDES: -- the limits.

16 THE COURT: Let's try it a different way. I'll take
17 your word for it that what the two counsel for the Ghost Ship
18 plaintiffs said was news to you and news to me, but they said
19 it.

20 MR. TSEKERIDES: They did.

21 THE COURT: They said it more than once.

22 MR. TSEKERIDES: Um-hum.

23 THE COURT: So if I were to grant an order for relief
24 from stay, the order would say, relief from stay granted,
25 provided, however, plaintiffs' sole recourse is the SIR, to the

PG&E Corp., Pacific Gas & Electric Co.

1 extent it exists, and insurance, which is another way of
2 saying, no claim against the debtor.

3 Now, let's suppose that's the order. Now fast forward
4 to we have a claims trust in place. What is the role of that
5 claims trustee, vis a vis Ghost Ship?

6 MR. TSEKERIDES: Well, under your hypothetical, you
7 lifted the stay, right?

8 THE COURT: Yeah, right.

9 MR. TSEKERIDES: I don't know that it has a role --

10 THE COURT: No role.

11 MR. TSEKERIDES: -- because if you lifted the stay,
12 they're going to state court. We're going to be defending it
13 in the meantime -- lawyers, and the company's going to have to
14 get documents and defend a case.

15 THE COURT: I got it. But the trustee -- the
16 liquidation trust --

17 MR. TSEKERIDES: Or whatever that trustee -- yeah.

18 THE COURT: -- has no role to play.

19 MR. TSEKERIDES: Under that hypothetical, you would be
20 right.

21 THE COURT: Okay. But why isn't that a good result,
22 both for the rest of the people, whether it be victims, fire
23 victims, or governmental agencies, or anyone else who is going
24 to look to that thirteen-and-a-half-billion-dollar trust,
25 assuming we have one? Why isn't that a good result, to take

PG&E Corp., Pacific Gas & Electric Co.

1 the Ghost Ship potential out of the equation?

2 MR. TSEKERIDES: Well, it's not a good result because,
3 for the debtor right now, we would have to then start gearing
4 up, spending money on a trial, when we could be mediating and
5 trying to use that money -- not spend the eight million dollars
6 and --

7 THE COURT: Okay.

8 MR. TSEKERIDES: -- and get it done that way.

9 THE COURT: Okay. So we're dealing -- it seems to me
10 that you and I are now debating how to best spend that eight
11 million dollars.

12 MR. TSEKERIDES: Ultimately. And --

13 THE COURT: Well, sir, what other reason do you have
14 for --

15 MR. TSEKERIDES: Well, and the impact to the debtors
16 in the meantime while we -- you know, as you know, there's a
17 lot going on.

18 THE COURT: There's a lot going on. But the point is,
19 what else has to get dealt with vis a vis Ghost Ship if I grant
20 the kind of order I've just described?

21 MR. TSEKERIDES: Well, we would -- I mean --

22 THE COURT: No, in the bankruptcy.

23 MR. TSEKERIDES: Oh, in the bankruptcy. Okay, yeah.

24 THE COURT: I'm mindful that lots of lawyers and lots
25 of professionals -- nonlawyers -- will work to defend the

PG&E Corp., Pacific Gas & Electric Co.

1 company in the Ghost Ship fire, and they're entitled to do
2 that. And the plaintiffs have to understand that that's what
3 it is. It's like there had not been a bankruptcy. We're back
4 to my discussion with Mr. Julian. If the wildfires hadn't
5 occurred, the Ghost Ship trial would have gone its course.

6 MR. TSEKERIDES: Right.

7 THE COURT: We can all --

8 MR. TSEKERIDES: We wouldn't be here.

9 THE COURT: We wouldn't be here. You and I would
10 never have met.

11 MR. TSEKERIDES: My loss, it would have been.

12 THE COURT: My loss.

13 MR. TSEKERIDES: Yeah.

14 THE COURT: But the point is, the insurance would have
15 been what it was.

16 MR. TSEKERIDES: Um-hum.

17 THE COURT: The coverage would have been what it was.

18 MR. TSEKERIDES: Right.

19 THE COURT: The Valero litigation would have --

20 MR. TSEKERIDES: Would have still been there. Yeah.

21 THE COURT: The Valero fire didn't drive PG&E into
22 bankruptcy either.

23 MR. TSEKERIDES: Nope.

24 THE COURT: Or not a fire --

25 MR. TSEKERIDES: The explosion.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: -- the meltdown --

2 MR. TSEKERIDES: Whatever.

3 THE COURT: -- whatever it was --

4 MR. TSEKERIDES: Yeah.

5 THE COURT: -- the shutdown. So what I'm getting at
6 is that, other than maybe spend or reallocate an eight-million-
7 dollar insurance fund, I don't know any other reason not to
8 grant relief from stay. You have to give me another reason.

9 MR. TSEKERIDES: Right. Well, I think I gave you two.

10 THE COURT: Okay.

11 MR. TSEKERIDES: One is, I mean, it is going to have
12 an impact on people who are working on both the reorganization
13 process and that would have to be involved in gathering
14 documents and supporting --

15 THE COURT: Right.

16 MR. TSEKERIDES: -- what is a major complex -- they
17 even said it's a complex litigation.

18 THE COURT: I have no doubt.

19 MR. TSEKERIDES: It's been granted complex status.
20 And why? I mean, 362 is there for a reason, to protect
21 debtors.

22 THE COURT: Well --

23 MR. TSEKERIDES: And --

24 THE COURT: Those same people won't be working quite
25 so hard on the estimation in the Superior Court or --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. TSEKERIDES: That's true.

2 THE COURT: -- or in Judge Domato's court if --

3 MR. TSEKERIDES: Assuming you say yes to our motion.

4 THE COURT: Well, that's right.

5 MR. TSEKERIDES: Yeah.

6 THE COURT: But the point is, if the RSA kicks in, an
7 awful lot of folks at PG&E might have less to do.

8 MR. TSEKERIDES: Less to do, but you still have the
9 OII going on.

10 THE COURT: I know, and you know what?

11 MR. TSEKERIDES: And those are five-day turnarounds on
12 discovery.

13 THE COURT: And we'll still have our Chapter 11 with
14 all the things we have to do.

15 MR. TSEKERIDES: Yes.

16 THE COURT: Anyway, go ahead. Anything else you want
17 to make? I want to --

18 MR. TSEKERIDES: No, I don't think so.

19 THE COURT: -- wrap it up --

20 MR. TSEKERIDES: I don't think so.

21 THE COURT: -- because we do have a lot to cover
22 today.

23 MR. TSEKERIDES: We spent a lot of -- and we have more
24 to do, right.

25 THE COURT: All right.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. TSEKERIDES: Thank you.

2 THE COURT: Anyone else want to be heard on the Ghost
3 Ship motion?

4 All right. First of all, I want to thank Ms. Slocomb
5 and Mr. Maxwell for coming. I can't imagine the horror that
6 you've gone through -- both of you and your families, and all
7 the other victims. And that's certainly true that we've had to
8 experience here, with all the wildfires and the Ghost Ship
9 fire. It may not have been a wildfire, but it's still a
10 devastating and tragic event. And it's too bad that you had to
11 be here and lose your family members, in Mr. Maxwell's case,
12 for such a personal tragedy.

13 I'm satisfied. And frankly, to be honest -- well, to
14 be honest -- whenever someone says, "to be honest with you",
15 you wonder, why do they have to say that? So I withdraw my "to
16 be honest with you", which is not saying I'm going to be
17 dishonest with you.

18 When I prepared for today and I saw the events over
19 the last few days, with the governor's position and then the
20 response and then the most recent development from the company,
21 it had significant impact on me to figure, well, what should I
22 do about Ghost Ship? And I was not certain about what to do
23 about the Ghost Ship, if we were going to be dealing with this
24 trustee, either with the RSA or without the RSA.

25 But based upon the representations of two counsel,

PG&E Corp., Pacific Gas & Electric Co.

1 which I will respect their position that they speak with
2 authority, to me that is the right result -- is to let the
3 Ghost Ship trial go forward or not, depending upon the Superior
4 Court judge's decision as to timing -- I'm not suggesting that
5 it won't go forward, unless it's mediated to a successful
6 conclusion -- is that -- to go back to my own philosophy, is
7 let's try to do what would have happened if there hadn't been a
8 bankruptcy. And we can't unwrite history, but one thing we can
9 do is put the Ghost Ship victims back where they were, before
10 the bankruptcy occurred, and let them have their day in court
11 and either mediate to a proper result or not.

12 And although I'm not cavalier and casual about
13 spending eight million dollars of the debtor's money, the point
14 is there are ways to redirect that. And what counsel has
15 explained to me is so traditional in lots of cases that are
16 smaller that I preside over -- and all bankruptcy courts do --
17 is to get that stay out of the way, if there is an insurance
18 recovery. This is not an anti-insurance company position.
19 It's a practical solution in bankruptcy.

20 So I'm satisfied that the plaintiffs will be well-
21 served by having their day in court. If PG&E is burdened by
22 having to prepare, PG&E should make a pitch to Judge Seligman
23 on Friday for more time, and he will use his judgment and
24 discretion and make that call.

25 I'm going to grant the motion for relief from stay but

PG&E Corp., Pacific Gas & Electric Co.

1 make it clear, for Ms. Alexander and Ms. Pino, that the order
2 that I sign will specifically and unequivocally say that, in
3 granting relief from stay, the Court has relied upon the
4 representations of the moving parties, such that -- and again,
5 I will let Mr. Tsekerides and opposing counsel craft the right
6 specific words, but the concept is, you get to recover what is
7 self-insured under what we call the SIR and nothing else from
8 Pacific Gas & Electric Company or PG&E Corporation through its
9 bankruptcy, whether it be under a trust or under some other
10 situation, and that the recovery is without recourse to them
11 but solely to insurance -- again, with the proper terminology.

12 So it's the deductible, in layman's terms -- the
13 deductible plus whatever you recover from the insurance. So
14 with that, I'll conclude this motion and look forward to
15 getting an order. Thank you all for your time on that.

16 We'll move to the next motion.

17 Mr. Tsekerides, where do you want me to go?

18 Well, actually, it would be Mr. Hearn (sic), I
19 believe?

20 MR. TSEKERIDES: Yeah, Mr. Karotkin is jumping out of
21 his seat. We'll have to work out -- on the deductible piece,
22 I'm not sure that they're entitled to the deductible as well,
23 but we'll work it out in the order.

24 THE COURT: No, they may not be, but the point is, the
25 limitation is --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. TSEKERIDES: Right.

2 THE COURT: -- limited.

3 MR. TSEKERIDES: Agreed.

4 THE COURT: Sure. I'm not asking you to give away
5 money that --

6 MR. TSEKERIDES: Okay.

7 THE COURT: -- you don't have to give away.

8 MR. TSEKERIDES: Thank you. We're just going to --
9 well, we'll deal with that in the order drafting.

10 THE COURT: Ms. Pino, you don't have any trouble
11 articulating the ruling, right?

12 MS. PINO: I do not. Thank you, Your Honor. And
13 thank you very much for your ruling.

14 THE COURT: Okay. Thank you.

15 MR. TSEKERIDES: So I think the Hearn motion is next.

16 THE COURT: All right. Who's appearing on the Hearn
17 motion? Is that Ms. Costin?

18 MS. COSTIN: Yes, Your Honor. Anne Costin for Todd
19 Hearn.

20 THE COURT: So I guess the short question to you --
21 and I've read the papers, and I'll give you time if you need --
22 but why would I grant relief here, when you've got this whole
23 resolution process in place?

24 MS. COSTIN: Sure. So --

25 THE COURT: Mediation and arbitration. And if Mr.

PG&E Corp., Pacific Gas & Electric Co.

1 Hearn is unsuccessful, that should be the end of it, I think,
2 and if he's successful, maybe he should have relief from stay
3 beyond that. But it's hard for me to -- this is not like the
4 fire. I mean, obviously, Mr. Hearn's rights are important to
5 him. I'm not minimizing that. But there already is a claims
6 resolution process in place.

7 MS. COSTIN: Yes, Your Honor. As a whistleblower,
8 someone who stood up and complained about unsafe devices at
9 PG&E, Todd Hearn is protected by California state statutory
10 law.

11 THE COURT: Right.

12 MS. COSTIN: And California state statutory law is not
13 subject to PG&E's collective bargaining agreement. It is not
14 subject to mandatory arbitration.

15 THE COURT: Well, then shouldn't the arbitrator make
16 that decision?

17 MS. COSTIN: No. In fact, the Napa County Superior
18 Court should hear Mr. Hearn's statutory claims, his
19 whistleblower claims. And if PG&E wishes to file a motion to
20 compel arbitration or argue preemption of some sort, it should
21 occur in a state court, as these are state law claims, and the
22 issues of preemption and arbitration are also state law issues.

23 THE COURT: So you weren't required to file an
24 opposition to their reply. Your reply is that your client is
25 not subject to it, and you need a court to determine that. Why

PG&E Corp., Pacific Gas & Electric Co.

1 can't I determine that?

2 MS. COSTIN: Well --

3 THE COURT: Why can't I determine that -- and I don't
4 mean on this oral record, but I mean, with a short brief, that
5 if you're right -- I don't question what you're saying -- if
6 the law is clear that Mr. Hearn's remedies can't be dealt with
7 here, maybe that helps me make a decision. But I don't know
8 that until you say something.

9 MS. COSTIN: Certainly. If the Court is at all
10 inclined to deny the motion for stay on this basis, on the
11 basis that there is this alternate union bargaining grievance
12 procedure, then I would absolutely request the ability to
13 provide briefing -- substantive briefing --

14 THE COURT: Yeah.

15 MS. COSTIN: -- to demonstrate to the Court that they
16 cannot make the arguments that they're making.

17 THE COURT: Well, under our procedures -- I don't know
18 how familiar you are with our procedures here, but we don't
19 even require, in regular cases, even any opposition to motions
20 for relief from stay. For PG&E, I had to educate my colleagues
21 from the East Coast that, even though we say we don't want
22 responses, I want preliminary responses. That's why PG&E filed
23 something called a preliminary opposition. But when I read the
24 opposition, I thought, well, why isn't this governed by the
25 arbitration and mediation procedure -- the claims resolution?

PG&E Corp., Pacific Gas & Electric Co.

1 And so you're saying that it's true.

2 Okay. So let's assume that, if I don't deny this
3 motion, I'll give you an opportunity to explain yourself. But
4 switch topics. What do I do about the fact that your client
5 filed a proof of claim, and we have a claims resolution process
6 that is in place, apart from anything else that's in the state
7 court system? He filed a proof of claim, right? And it's --

8 MS. COSTIN: Correct.

9 THE COURT: -- deemed allowed until someone objects.
10 And so if the debtor objects to his claim, he's --

11 MS. COSTIN: And --

12 THE COURT: I don't believe Mr. Hearn's situation is
13 in the wildfire trust. He's just what we call a passthrough,
14 the same way he would be tested if there were no bankruptcy.

15 MS. COSTIN: Correct. As the Court indicated this
16 morning, someone is going to have to adjudicate whether there's
17 liability and damages on this matter. And with PG&E's
18 opposition to our motion for relief from stay, they absolutely
19 did object to his proof of claim. Stacy Campos, PG&E's in-
20 house employment lawyer, clearly stated in her declaration that
21 they asserted that he was not fired for being a whistleblower.

22 THE COURT: Right, right. That's right.

23 MS. COSTIN: Not surprising.

24 THE COURT: That's right.

25 MS. COSTIN: And therefore they're contesting

PG&E Corp., Pacific Gas & Electric Co.

1 liability completely.

2 THE COURT: Well, but the debtor did not file an
3 objection to the proof of claim. That doesn't --

4 MS. COSTIN: It may not have that name on it --

5 THE COURT: Right. Well, that's right.

6 MS. COSTIN: -- but I would certainly expect that they
7 will not be agreeing that they terminated Mr. Hearn because he
8 complained that there were unsafe devices on the power lines.
9 I doubt that PG&E will take that approach.

10 THE COURT: But why couldn't that be adjudicated as
11 part of the claims objection process?

12 MS. COSTIN: Well, I think that, with a whistleblower
13 claim in particular, it presents a unique situation that is
14 best handled by a state court.

15 THE COURT: Well, why is that so?

16 MS. COSTIN: Because we have complex issues of motive,
17 pretext, and we need significant discovery. Someone is going
18 to have to dig into this case, and it should be handled by --

19 THE COURT: But tell me --

20 MS. COSTIN: -- employment attorneys.

21 THE COURT: But tell me why. Again, I know that a lot
22 of people and lawyers with more state court experience than
23 bankruptcy court always like to say, this is all governed by
24 state law, which is another way of saying, we think those
25 Superior Court judges know this body of law better than the

PG&E Corp., Pacific Gas & Electric Co.

1 bankruptcy judges. And sometimes that's true, and sometimes
2 it's not true.

3 So why is it unique? Why couldn't the bankruptcy
4 court make that determination on a claims objection?

5 MS. COSTIN: I think that -- I'm not saying that it's
6 impossible, but the way I envision proving liability here is
7 through significant discovery, with motions to compel, with
8 depositions of human resources people for people that were out
9 on the field, hearing Todd Hearn stand up in meetings and --

10 THE COURT: Well, those go to the merits. I
11 understand.

12 MS. COSTIN: Right. I just think it's a burdensome
13 process, and --

14 THE COURT: But your argument is a legal argument
15 though. We're back to the point that you'd like to brief why
16 the arbitration and mediation procedures are preempted by the
17 name of -- or not preempted -- are replaced by the applicable
18 law that you rely on.

19 MS. COSTIN: I'm sorry, I didn't understand the
20 Court's question.

21 THE COURT: You're restating what you said in your
22 opening comments, that PG&E's response you can defeat by the
23 legal argument that they can't impose on your client the
24 mediation and arbitration procedure.

25 MS. COSTIN: I understand, so --

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: I mean, the grievance -- grievance is the
2 better word, not mediation.

3 MS. COSTIN: Right.

4 THE COURT: Grievance and arbitration.

5 MS. COSTIN: I suppose I'd say one of the factors this
6 Court should consider, obviously, is, where's the appropriate
7 forum? And they're saying, we're going to proceed anyway, Your
8 Honor, through the forum that we choose, which is a private,
9 secret arbitration, where Mr. Hearn doesn't have a lawyer,
10 doesn't have discovery --

11 THE COURT: Well, it's a grievance. I mean, isn't
12 there a negotiated labor concept that's well-established for
13 lots of employees who have grievances?

14 MS. COSTIN: For many employees who have grievances
15 that arise out of the bargaining agreement, but not for
16 whistleblowers that bring state claims.

17 THE COURT: Well, what about employees who pad their
18 time records? I mean, again, there are two sides of the story
19 here, right?

20 MS. COSTIN: Right.

21 THE COURT: And that's PG&E's theory. So if your
22 client hadn't done what people call whistleblower but had been
23 terminated for padding his hours, that would be litigated or
24 resolved through the grievance procedure, wouldn't it?

25 MS. COSTIN: Correct, but that's not --

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Okay.

2 MS. COSTIN: -- the situation we're in, right? The
3 situation we're in, the CBA doesn't have any waiver of a jury
4 trial. It doesn't reference any statutory claims. And the
5 case law is quite clear that PG&E doesn't get, under these
6 circumstances, to dictate the forum. This Court may be able to
7 dictate the forum, but PG&E doesn't get to choose arbitration
8 through a grievance process over state court.

9 THE COURT: So -- okay. Well, let me --

10 MS. COSTIN: And --

11 THE COURT: Let me see what --

12 MS. COSTIN: Sure.

13 THE COURT: -- the debtor has to say. I won't oust
14 you.

15 MS. COSTIN: Okay.

16 THE COURT: Go ahead. You want to add something
17 further?

18 MS. COSTIN: One final comment, which is, the other
19 factor we haven't considered here is the balance of harm. And
20 Mr. Hearn, when PG&E fired him from his job of twenty-two
21 years -- he lost his wages. He lost his health benefits. But
22 they also took something else away from him, which was his
23 ability to work in Northern California.

24 THE COURT: Well, I understand. And that itself is
25 contested. But let me try this one more question, though.

PG&E Corp., Pacific Gas & Electric Co.

1 MS. COSTIN: Sure.

2 THE COURT: Leave aside the whistleblower allegations
3 that you say aren't within the grievance process. If Mr. Hearn
4 does go through with the grievance process and prevails,
5 doesn't he get reinstated?

6 MS. COSTIN: He would have limited remedies. One of
7 those might be reinstatement and past wage loss, but he would
8 not be able to seek the remedies that would be available to him
9 in state court, which would include punitive damages, key in
10 this process obviously, and also emotional distress damages.
11 Those are not available through the grievance process.

12 And I'll just note that, at no point in time in the
13 grievance process to date, has Mr. Hearn ever raised this state
14 law retaliation claim. It simply has not been adjudicated at
15 all to this point, because it's not part of the CBA process.
16 So PG&E is not going to be affected at all by adjudicating this
17 claim in state court, as opposed to doing so in a different
18 forum.

19 THE COURT: So what happens if I were to deny this
20 motion? What happens next?

21 MS. COSTIN: You would be placing Mr. Hearn in an
22 extremely difficult position --

23 THE COURT: Well, I --

24 MS. COSTIN: -- because --

25 THE COURT: I don't --

PG&E Corp., Pacific Gas & Electric Co.

1 MS. COSTIN: Right.

2 THE COURT: -- intend to do that, if the law doesn't
3 permit it, but what happens next procedurally?

4 MS. COSTIN: Well, Mr. --

5 THE COURT: Doesn't he then go through the grievance
6 process?

7 MS. COSTIN: He would have to make a decision --

8 THE COURT: Or make a --

9 MS. COSTIN: -- about --

10 THE COURT: Yeah.

11 MS. COSTIN: Because he would have to make a decision
12 about whether or not to pursue his grievance. And the danger
13 there is, if he chooses to pursue his claims through this
14 grievance process, he would be forced to raise this retaliation
15 whistleblower claim there, without a lawyer, without discovery.

16 Let's say he lost. Well, then we have a real problem,
17 and PG&E has a collateral estoppel argument. So it's really
18 tying his hands, and then we would have double litigation.
19 Then we would, then at the end of the grievance process, be
20 revisiting the entire case in state court.

21 THE COURT: Does he have a right to counsel at the
22 arbitration stage?

23 MS. COSTIN: No, no.

24 THE COURT: No? All the way through arbitration?

25 MS. COSTIN: No, they do not, but PG&E does have a

PG&E Corp., Pacific Gas & Electric Co.

1 team of in-house employment lawyers, as set forth in Ms.
2 Campos's declaration, that would be able to represent PG&E.

3 THE COURT: So if he got an adverse ruling, you're
4 saying that that would be dispositive or not? I mean, again,
5 this --

6 MS. COSTIN: I'm saying that PG&E would argue that it
7 would be dispositive.

8 THE COURT: Well, what would you argue? Suppose you
9 hadn't come on the scene, and Mr. Hearn got through the drill.
10 And finally, some other arbitrator said, sorry, Mr. Hearn,
11 you're out of luck; you padded the books, and you -- no help.
12 And then he came to you. Would you have a remedy?

13 MS. COSTIN: There is California law that argues
14 against collateral estoppel and indicates that, even if a
15 matter has already been grieved, it can be revisited in state
16 court. I can give the Court the citation to that case, if it
17 would like.

18 THE COURT: Well, you can put it in your --

19 MS. COSTIN: Okay.

20 THE COURT: -- in your further brief. But your point
21 is there is at least a remedy to try to get relief from that?

22 MS. COSTIN: Yes, but the remedy would be starting a
23 statutory state court employment action, so we'd be back at the
24 starting point now --

25 THE COURT: Okay. No, I understand.

PG&E Corp., Pacific Gas & Electric Co.

1 MS. COSTIN: -- that we're at. So I think it's just,
2 when you look at judicial economy, if that's what this process
3 is supposed to be about, it makes no sense to say, go ahead,
4 Mr. Hearn, and go through a year-long union grievance CBA
5 adjudication, and then at the end of it, start over with a
6 state court statutory claim.

7 THE COURT: Okay. Mr. Tsekerides?

8 MS. COSTIN: Thank you.

9 THE COURT: What have you got to say?

10 MR. TSEKERIDES: Well, first of all, it's not PG&E --
11 Ted Tsekerides for the debtors -- imposing its will. It was a
12 collective bargaining agreement with the IBEW, and the IBEW has
13 lawyers. So I don't know the point that he's unrepresented --

14 THE COURT: Well, but does the employee have a right
15 to have a lawyer at the table with him or her at the --

16 MR. TSEKERIDES: I don't know, but we can look into
17 that while we're doing the briefing. But I know the IBEW, and
18 he's represented by somebody, is my point. And we can look
19 into that when we do the briefing, but this has been going on
20 since January. The grievance was filed in January. This is
21 not a pending lawsuit. They want you to --

22 THE COURT: Right. No, I understand that.

23 MR. TSEKERIDES: -- lift the stay to sue us, and
24 presumably they had these rights -- they won, and this is the
25 first time he's attempted to bring this lawsuit. So there's a

PG&E Corp., Pacific Gas & Electric Co.

1 CBA --

2 THE COURT: Well, again, this is similar to the point
3 of --

4 MR. TSEKERIDES: Yeah.

5 THE COURT: -- he could have filed his motion earlier,
6 and you would have argued it's too early. So --

7 MR. TSEKERIDES: Well, no I would have argued there's
8 a CBA --

9 THE COURT: Yeah.

10 MR. TSEKERIDES: -- is what I would have argued --

11 THE COURT: No, I understand.

12 MR. TSEKERIDES: -- which is what I'm arguing right
13 now. And there's a reason for that, and that's a process that
14 the union agreed to. And if it's working its way through,
15 there's no reason to then have another path, creating again out
16 of whole cloth brand new. And he'll have whatever rights, and
17 if he was found to have been wrongfully terminated, they can
18 put him back in. And I'm sure there are other remedies that
19 are available. I'm not a labor lawyer.

20 But my point is that there is a grievance process
21 already underway. It's not like it's just starting. It's
22 already underway, and I think they're in step three of five.
23 So primarily, that's the reason to deny it right now, but also
24 then we shouldn't have another path. But there is a CBA.

25 THE COURT: Okay. Ms. Costin, how much time do you

PG&E Corp., Pacific Gas & Electric Co.

1 want to file a supplemental brief and address this issue? And
2 I'll really put the ball in your court, and you can tell me two
3 days or two months. I don't care.

4 MS. COSTIN: Two weeks would be great, Your Honor.

5 THE COURT: Okay. Mr. Tsekerides, do you need to
6 reply, or do you --

7 MR. TSEKERIDES: I think we would need to reply, yes.
8 I don't know what's in there, so I would like the opportunity
9 to reply.

10 THE COURT: Okay. I'm going to take this -- I'm going
11 to put this on or take it with the following: two weeks for a
12 supplemental -- we'll call it a reply by Ms. Costin for her
13 clients, and two weeks after that from the debtor. Debtor
14 shall reply -- or whatever the right name is -- and then it's
15 submitted.

16 MR. TSEKERIDES: Okay. So we don't have to have
17 further argument on that?

18 THE COURT: No. Well, I'll tell you what. It'll be
19 submitted, and if I need argument, I will put it on the
20 calendar. If not, I'll issue a ruling.

21 MR. TSEKERIDES: Very good.

22 THE COURT: Okay, thank you.

23 MR. TSEKERIDES: And I think there was one more.

24 MS. COSTIN: Thank you.

25 MR. TSEKERIDES: Vlazakis is the last one.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Well, there is, but I just want -- okay,
2 Ms. Costin, anything --

3 MR. TSEKERIDES: Oh, sorry.

4 THE COURT: -- anything else? Do you want to --

5 MS. COSTIN: Thank you, Your Honor.

6 THE COURT: You clear on this?

7 MS. COSTIN: We appreciate the Court's time.

8 THE COURT: Okay. Thank you for your time. Thank you
9 for coming.

10 Thank you, Mr. Hearn.

11 Okay. Then yes, first, Vlazakis. Do we have counsel
12 here for that?

13 Good morning.

14 MR. BERESTKA: Good morning, Your Honor.

15 THE COURT: I need a name.

16 UNIDENTIFIED SPEAKER: Your Honor, would you mind if I
17 was excused? Your Honor, can I be excused?

18 THE COURT: Yeah, sure. Of course.

19 UNIDENTIFIED SPEAKER: Thank you.

20 MR. BERESTKA: Good morning, Your Honor. Ron Berestka
21 on behalf of the -- I'd like to call them the Vlazakis family,
22 who are defendants in the case filed by PG&E in the state
23 court. George Vlazakis --

24 THE COURT: Yeah. And if -- Mr. Benvenutti, are you
25 presenting the defense here?

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BENVENUTTI: Yes, I am, Your Honor.

2 THE COURT: I just have a quick question for you. I'm
3 going to take the time to move fast. Do you agree that this is
4 a compulsory counterclaim?

5 MR. BENVENUTTI: I'm sorry?

6 THE COURT: They have a -- is the -- are the three --
7 the debtor is conceding the relief from stay for the causes 4
8 through 7 but not as to 1 through -- 1, 2, and 3. Right?

9 MR. BENVENUTTI: Correct.

10 THE COURT: But my question to you is, do 1, 2, and 3
11 constitute a compulsory counterclaim under state law?

12 MR. BENVENUTTI: Your Honor, I can't answer that
13 question. What I can say is the debtor -- the claimant has
14 filed a proof of claim, and --

15 THE COURT: I understand.

16 MR. BENVENUTTI: -- and I'm reasonably certain that
17 the law is that, for stay purposes, the Court views a claim
18 against the debtor standing on its own right under the terms of
19 the stay, without reference to what state law characterizes it
20 as.

21 THE COURT: Well -- but this is a situation where,
22 what happens if they didn't file the proof of claim? They're
23 even worse off. It's got to be protected. My problem is this.
24 The debtor started this lawsuit. There's a wall that somebody
25 wants to tear down, and the way I read the debtors' papers, the

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1 debtor says, well, we'll go forward with causes 4 through 9,
2 and we'll -- or 4 through 7, and we'll tear the wall down. And
3 then of course, the plaintiff's out of luck; the building's
4 just -- is essentially damaged beyond repair, right?

5 Counsel, isn't that what it amounts to?

6 MR. BERESTKA: Your Honor, you hit the nail on the
7 head with that. That's exactly our position. We -- and we're
8 a little unique here. We're not actually a plaintiff in the
9 underlying suit.

10 THE COURT: No.

11 MR. BERESTKA: We're a defendant.

12 THE COURT: I know that. You're a defendant.

13 MR. BERESTKA: And we've been dragged into court --

14 THE COURT: And you want to defend --

15 MR. BERESTKA: -- by PG&E.

16 THE COURT: But more importantly, this isn't about
17 money; this is about tearing the wall down.

18 MR. BERESTKA: Well, that's the --

19 THE COURT: Or something like that.

20 MR. BERESTKA: That's the interesting part about the
21 preliminary opposition, is they try to distinguish between
22 title claims and contract claims when the breach of contract
23 claim is about the title.

24 THE COURT: But what are you going to do if the debtor
25 moves to reject the contract? Because that's the real

PG&E Corp., Pacific Gas & Electric Co.

1 question.

2 MR. BERESTKA: Well --

3 THE COURT: If there's a legal matter, if Mr.
4 Benvenutti says, by the way, we just filed our motion to reject
5 the agreement --

6 MR. BERESTKA: Well --

7 THE COURT: -- then what?

8 MR. BERESTKA: We're going to oppose it and see where
9 we land on that.

10 THE COURT: Yeah, but those are --

11 MR. BERESTKA: That's --

12 THE COURT: -- very tough to oppose.

13 MR. BERESTKA: Well, there's a couple issues here.
14 One is they're looking to get out of their obligations under
15 the contract, which they've already indicated that they would
16 be rejecting.

17 THE COURT: Well -- but that's the point. In other
18 words, they -- the debtor maybe shouldn't have filed the
19 lawsuit. Be careful what you asked for. But if, instead of
20 filing the lawsuit, they were already in bankruptcy, if they
21 filed a motion to reject the contract, I wonder whether you
22 would have had any remedy and -- any defense, I should say.

23 MR. BERESTKA: Well, it's -- that -- we'll have to
24 cross that bridge when we come to it, to be quite honest, Your
25 Honor. I -- that's not --

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Well, I know, but I don't want to -- I
2 don't want to make things worse. I mean, to me, if I -- even
3 if I were to grant your motion for relief from stay, because it
4 sounds to me like it could be a compulsory cross-complaint, and
5 I am -- proof of claim -- the deadline's run, and they run, and
6 there's great penalty if you don't hit that deadline. But if
7 the debtor says, well, we're going to reject the contract, then
8 it seems to me you're right back in the soup.

9 MR. BERESTKA: Well --

10 THE COURT: And that's a problem.

11 MR. BERESTKA: -- part of it is -- part of it is we're
12 looking for the specific performance to own the property and
13 the --

14 THE COURT: I know --

15 MR. BERESTKA: -- obtain the title.

16 THE COURT: -- but that's the point. That's the
17 contract they'll try to reject.

18 MR. BERESTKA: Exactly. But that's the -- that's kind
19 of where we're kind of caught in between here. And that's why
20 we're caught in between with the state court in this case.
21 We're trying to assert our right to have this jury trial, and
22 we're met at every corner by PG&E saying, well, you can't have
23 it, you can't file a cross-complaint, you can't do anything.

24 THE COURT: Okay. Let me try it again from your point
25 of view, Mr. Berestka.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BERESTKA: Sure.

2 THE COURT: If I deny relief from stay and the
3 plaintiff -- leave aside the bankruptcy tactic of a motion to
4 reject your contract. And you're at trial now in the superior
5 court on Counts 4 through 7. And the judge rules in favor of
6 PG&E. What's left? What happens to the wall?

7 MR. BERESTKA: Well, unless we have our contract
8 claims, we're done.

9 THE COURT: You have a claim for damages; that's all
10 you have.

11 MR. BERESTKA: Correct.

12 THE COURT: You're right back to the situation. So --

13 MR. BERESTKA: Well, that's putting the cart before
14 the horse, though, because if we have to go to trial on those
15 other issues, we may have had a right to the wall. That's the
16 problem.

17 THE COURT: Oh, well, that's the problem that I'm
18 having. The debtor maybe shouldn't -- if the debtor chooses to
19 file suit, they should be prepared to take the consequences of
20 what happens when you sue somebody; you get sued back. But
21 this isn't about money, per se. It's about the wall coming
22 down or --

23 MR. BERESTKA: Yes.

24 THE COURT: -- staying up or being reinforced or
25 whatever. And here, if the debtor rejects the contract, which

PG&E Corp., Pacific Gas & Electric Co.

1 they -- it presumably has the right to do, then maybe the state
2 court won't solve your problem.

3 In other words, try it differently. If I granted
4 relief from stay and you're over in superior court, and Mr.
5 Benvenuti says to the judge, we just moved to reject the
6 contract, I wonder whether the state judge would have any
7 option but to take the consequences of, well, reject the
8 contract is a lawful breach. It's -- we're going to breach the
9 contract. So how can the judge order specific performance of a
10 contract that's been breached?

11 MR. BERESTKA: Well, that's the problem we face.

12 THE COURT: So how do I solve it?

13 MR. BERESTKA: I -- well, the --

14 THE COURT: I can't take away their right to move
15 the -- reject it unless --

16 MR. BERESTKA: No --

17 THE COURT: -- they don't have the right.

18 MR. BERESTKA: No, we don't. And I don't know that
19 right now. I don't know the extent of that right. They have
20 it -- this is the first time I had heard of them mentioning a
21 right to reject. They've, all along, said, no, you don't --
22 you've got to go to the bankruptcy court and get relief from
23 stay because the stay bars your actions.

24 THE COURT: Well, I understand. But the preliminary
25 opposition was where they raised it. I didn't --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BERESTKA: Oh, no, no. I understand, Your Honor.

2 THE COURT: I didn't make it up. I mean, it's your --
3 you're over here because the state judge said, I'm not going to
4 let you amend the complaint until the bankruptcy court says I
5 can.

6 MR. BERESTKA: Yes.

7 THE COURT: Well, Mr. Benvenutti, when are you going
8 to commit to file a motion to reject? Because it seems to me,
9 I've got to -- we've got to break this logjam somehow.

10 MR. BENVENUTTI: Your Honor, the motion is in
11 preparation. We have both authorization and direction from the
12 client to file it. I believe this is the first contract
13 rejection motion in the case, so we're -- to some extent, we're
14 plowing uncharted territory here. But --

15 THE COURT: Well, it isn't as though you're a novice
16 at rejecting contracts.

17 MR. BENVENUTTI: No.

18 THE COURT: You may not --

19 MR. BENVENUTTI: That's certainly true, Your Honor.

20 THE COURT: You may not --

21 MR. BENVENUTTI: That's certainly true.

22 THE COURT: -- have had occasion to reject one that
23 has a wall coming down.

24 MR. BENVENUTTI: No.

25 THE COURT: I feel like --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BENVENUTTI: No.

2 THE COURT: -- I'm in Ronald Reagan, saying, take down
3 that wall.

4 MR. BENVENUTTI: Well -- and Your Honor, let me
5 clarify something, too. I mean, the short answer is, yes, if
6 the con -- the motion is -- we started preparing it. We will
7 get it on file in due course. There are a number of people
8 that have to review things like this before they get filed.
9 But -- so if it were the usual case, I could tell you we could
10 have it done within a week. This is not the usual case; it may
11 take a little longer. But it is in preparation, and it will be
12 moving forward.

13 But let me put this into -- let me clarify something.
14 What the rejection motion will do is excuse the debtor -- we
15 believe it should be granted, and we believe that the legal
16 consequence of that is to excuse the debtor from any burden of
17 specific performance under the contract.

18 THE COURT: Right. Right. That's right. That's what
19 I would assume you --

20 MR. BENVENUTTI: All right.

21 THE COURT: -- would want.

22 MR. BENVENUTTI: So independent of the contract, the
23 contract was entered into as an effort to try and solve this
24 dilemma of the encroachment. All right? Before the --

25 THE COURT: Correct.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BENVENUTTI: Before the contract -- before the
2 contract --

3 MR. VLAZAKIS: If I may be heard, Your Honor? I'm Mr.
4 Vlazakis. That's not a true statement. We --

5 THE COURT: Well, I'm going to let -- your lawyer is
6 speaking for you, sir.

7 MR. VLAZAKIS: It's not --

8 THE COURT: I'll let you have a moment to talk to --

9 MR. VLAZAKIS: -- a -- it's a misrepresentation to the
10 Court.

11 THE COURT: Okay. I understand that, but I'm not
12 going to -- you'll have a chance to speak with your counsel.

13 Excuse me. Go ahead, Mr. Benvenutti.

14 MR. BENVENUTTI: The contract was entered into in
15 November of 2017 in response to PG&E discovering that there was
16 this encroachment.

17 THE COURT: Right. Got it.

18 MR. BENVENUTTI: It was an attempt to resolve the
19 issue with the encroachment. The encroachment presented a
20 problem. The problem was that PG&E was prevented by the
21 encroachment from being able to construct its intended purpose
22 for this property when it bought the property from the City of
23 Oakland, unaware of the encroachment, which is to enhance the
24 safety of its natural gas distribution system. All right? So
25 underlying all of this is the objective of being able to

PG&E Corp., Pacific Gas & Electric Co.

1 enhance the safe operation of the natural gas system, which is
2 a pretty big deal.

3 In any event -- in any event, to the specifics of this
4 situation, encroachment causes a problem. PG&E would like to
5 be able to deal with the encroachment in a way that permits the
6 project that it has in mind to go forward without having a
7 dispute with the neighboring landowner.

8 THE COURT: Understood.

9 MR. BENVENUTTI: A contract is entered into; it's not
10 performed. There is a dispute over whether PG&E breached the
11 contract, whether conditions weren't met that excused PG&E from
12 performing. There is a dispute over what the contract means
13 and whether it should be enforced outside of bankruptcy.

14 THE COURT: And whether it's rejectable.

15 MR. BENVENUTTI: And whether -- well, there may be an
16 issue of that, too.

17 THE COURT: Because it may not be rejectable.

18 MR. BENVENUTTI: There may be an issue of that, too.
19 I don't think --

20 THE COURT: Right.

21 MR. BENVENUTTI: -- that's the case, but it hasn't
22 been briefed.

23 THE COURT: Well, no -- but you -- there's an -- okay.
24 So what should I do?

25 MR. BENVENUTTI: Well, what I think you should do,

PG&E Corp., Pacific Gas & Electric Co.

1 Your Honor, is take what we have -- accept what -- please, take
2 what we've offered, which is to separate the contract issue,
3 which I think is severable, particularly if specific
4 performance is not available, which we believe it will not be
5 when the contract is rejected. We had no opposition to the
6 issues relating to title that are independent of the contract
7 being litigated. If they have a jury trial right with respect
8 to those, they can be litigated. We -- I think, as we said in
9 the papers, that they will not have a jury trial right with
10 respect to them.

11 But be that as it may, it is what it is. But the
12 contract dispute, because of its nature, if it's litigated in
13 the state court, as part of the disposition of title, threatens
14 to bog this litigation down significantly and further delay a
15 project that's already been delayed a long time, that has, as
16 its objective --

17 THE COURT: Well, I understand --

18 MR. BENVENUTTI: -- enhancing safety.

19 THE COURT: Listen, I understand. The objectives are
20 commendable. I don't believe that the -- that Mr. Vlazakis and
21 his family, if they contest the objectives, that's something
22 different. The question is their legal rights. And what
23 struck me as I read the papers is, here, for the second time
24 this morning, I have to decide whether to ask a superior court
25 judge in the same Alameda County to figure out what to do. And

PG&E Corp., Pacific Gas & Electric Co.

1 if I said, well, you can go ahead and try this case, but by the
2 way, you can only try a portion of it. And if the remedy is
3 such that the moving -- the defendant here, who is the moving
4 party today, but didn't even invite the lawsuit, is without a
5 remedy because the Court has granted the relief that PG&E seeks
6 before the -- before they have a right to be heard, then
7 there's something wrong with that.

8 So -- and to my mind -- again, I might be
9 oversimplifying, but it sounds to me like the superior court
10 judge, if he goes your way, would, in effect, take away the
11 alternative that the counterparty is facing and asking for in
12 the form of specific performance.

13 So the right thing for me to do, I believe, is to let
14 you, Mr. Benvenutti, explain and convince me that you have the
15 right to reject. And if you do, then maybe I have to deny this
16 motion for that reason. But the flip side is, if you don't
17 have the right to reject, then this thing ought to get resolved
18 in one forum, which is another way of saying, I think I'd give
19 you a period of time to show me why the motion -- excuse me,
20 the executory contract is rejectable, which would, therefore,
21 moot the relief sought by the moving party.

22 And then I'll give them a similar amount of time to
23 respond. And much like the last case, I'll take it under
24 the -- on the papers and make a ruling or, if necessary, have a
25 hearing.

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1 MR. BENVENUTTI: Well, we could do that, or we could
2 file the motion to reject.

3 THE COURT: well -- but I think you have to. In other
4 words, I -- if I give you a deadline -- but it's got to be more
5 than that. It's got to be a response that says, we -- here is
6 our motion to reject, and this is why you must deny the motion
7 for relief from stay as to Counts 1, 2, and 3.

8 MR. BENVENUTTI: Very well.

9 THE COURT: And I give the other side an opportunity
10 to respond. Any problem with that?

11 MR. BERESTKA: Actually, it sounds great, Your Honor,
12 but it creates a little bit of a logistical problem because we
13 have a state court that's struggling with the notion of what to
14 do with our case and our trial.

15 THE COURT: Well, you need to tell that judge that the
16 bankruptcy judge is going to solve her problems for her,
17 partly.

18 MR. BERESTKA: Well, what I was going to suggest is
19 lifting the stay with that caveat that they're going to file
20 this motion, and then the trial court -- if it's granted, we go
21 back --

22 THE COURT: That gets even -- that gets even worse.
23 To me, the worse thing to do is to ask a superior court judge
24 to start to interpret and understand what we're doing in this
25 crazy bankruptcy world --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BERESTKA: Well --

2 THE COURT: -- because we have our own little world
3 that we live in.

4 MR. BERESTKA: I understand. The reason I say that is
5 because some of the other claims -- for example, the
6 prescriptive easement claim -- also entitle us to a jury trial.
7 It would give the superior court the heads up that we can't
8 have a bench trial, that she needs to set it for a jury trial,
9 because we have the prescriptive easement claim.

10 THE COURT: Well, what is the current state of
11 affairs? When's the next hearing?

12 MR. BERESTKA: The next hearing in that case?

13 THE COURT: Yeah.

14 MR. BERESTKA: Is December 24th.

15 THE COURT: And what is the nature of the hearing?

16 MR. BERESTKA: Well, it's to hear our motion to leave
17 to file the cross-complaint --

18 THE COURT: But --

19 MR. BERESTKA: -- which the court set. They required
20 us to file the motion.

21 THE COURT: But couldn't there be a stipulation that
22 says, we followed -- we did what you said, we put the matter to
23 the bankruptcy court; the bankruptcy court wants further
24 briefing and a continuance?

25 MR. BERESTKA: That's fine. I'm just getting caught

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1 in the position where PG&E is arguing prejudice and delay, and
2 we've got a May trial date. And I'm trying to juggle a couple
3 things here to keep everybody happy.

4 THE COURT: Mr. Berestka, I understand your point.
5 And I'm sympathetic to your dilemma and inclined to grant
6 relief, except if the debtor has a right under the Bankruptcy
7 Code to reject, I can't take away that right. If the contract
8 isn't rejectable because it's already been breached and it's no
9 longer executory, then maybe Mr. Benvenutti can't make his
10 case, and you have an opportunity to persuade me that I should
11 grant relief because they can't do what they want.

12 And then it's easy. Then I say, fine, Superior Court,
13 do your thing across the board, right or wrong. But I can't,
14 just on the fly here, say to Mr. Benvenutti, sorry you don't
15 have this tool in the toolbox called "reject" if, indeed, he
16 maybe does have it.

17 So I don't want to complicate things for another
18 court. But my own view is it simplifies it if we clarify what
19 the ground rules are. And that's my thinking on it. So --

20 MR. BERESTKA: That's fine, Your Honor.

21 THE COURT: -- Mr. --

22 MR. BERESTKA: I was just offering something else up.

23 THE COURT: I understand.

24 Mr. Benvenutti, on the last case, your client's
25 opponent asked for two weeks. Do you want two weeks, or do you

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1 want more?

2 (Counsel confer.)

3 THE COURT: So I could -- I'm going to get a -- I'm
4 going to get further opposition to the relief from stay,
5 coupled with the motion to reject.

6 (Counsel confer.)

7 MR. BENVENUTTI: Your Honor, if --

8 (Counsel confer.)

9 THE COURT: Unless you want to mediate a resolution
10 here.

11 MR. BENVENUTTI: Your Honor, if we could have until
12 the Monday after New Year's, that would be helpful.

13 THE COURT: Mr. Berestka, you're going to -- you can
14 ask the superior court judge to give you more time, and I
15 suspect that she will be agreeable. If he files by January
16 3rd, can you file by the --

17 MR. BENVENUTTI: I think that's the 6th, Your Honor.

18 THE COURT: Oh. You said the Monday -- oh, you say
19 Monday after New Year's?

20 MR. BENVENUTTI: Yes.

21 THE COURT: Yeah, 6th. Okay. Would January 20th be
22 sufficient for you, two weeks?

23 MR. BERESTKA: That's fine, Your Honor.

24 MR. BENVENUTTI: Your Honor, hold on a second.

25 (Counsel confer.)

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BERESTKA: The only thing I would ask is that, if
2 PG&E's willing to stipulate with the trial court that we are to
3 move this hearing, I need that agreement from them.

4 THE COURT: Okay. Let's see if we can agree with
5 that.

6 (Counsel confer.)

7 MR. BENVENUTTI: All right. That's fine. So it's --

8 THE COURT: Are you willing to enter into a stip -- or
9 your co-counsel on a stip to submit to the superior court to
10 just continue the January 20 -- whatever the hearing is?

11 MR. BENVENUTTI: December 24th, Your Honor.

12 THE COURT: Yeah. Would you be willing -- are you
13 willing to stip on the record here that you'll enter a stip
14 with Counsel --

15 MR. BENVENUTTI: Well, I --

16 THE COURT: -- to put that over?

17 MR. BENVENUTTI: I don't have -- I don't have explicit
18 authority to do that, Your Honor, but I think if the Court made
19 it part of the deal we're talking about here, I think I would
20 implicit authority.

21 THE COURT: I think if I were able to communicate with
22 the superior court judge, I would say, I'm -- I think we can
23 solve some of this problem, but I need more time. And so we'd
24 like you to continue your matter until after -- until late
25 January or early February.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BENVENUTTI: All right, Your Honor. And may I
2 have the date again of Mr. Berestka's response?

3 THE COURT: Two weeks after -- so the debtor -- PG&E,
4 debtors, are going to file what is a further opposition to the
5 motion for relief from stay and motion to reject. And Mr.
6 Berestka's response to that -- excuse me, that's January 6th.

7 MR. BENVENUTTI: Um-hum.

8 THE COURT: Mr. Berestka's response to that is January
9 20th.

10 And --

11 MR. BENVENUTTI: Very well.

12 THE COURT: -- Mr. Berestka, you don't have to
13 respond -- I mean, your response should be a combined why the
14 contract isn't rejectable or, if it is, why it shouldn't be
15 rejected. Okay? That's a bit of a time -- I'm changing the
16 procedures a little bit, but we're going to make this things
17 go.

18 MR. BERESTKA: Perfect. Thank you, Your Honor.

19 THE COURT: Okay. Good luck. Thank you for your
20 time.

21 MR. BENVENUTTI: Very well. Thank you, Your Honor.

22 THE COURT: Okay. Now, we're down to the RSA. I
23 think it's time to take a break.

24 But Mr. Karotkin, are you on duty for that today?

25 MR. KAROTKIN: Yes, sir.

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1 THE COURT: What's your pleasure? A short break or --
2 remember what I said before. I didn't realize we'd go quite so
3 long today, but we did. So what would you like me to do?

4 MR. KAROTKIN: Whatever you're -- whatever you
5 suggest, Your Honor, is fine.

6 THE COURT: Well, tell me -- well, let's do a heads-up
7 for me. Last night -- I won't tell you what time -- I looked
8 at the docket and saw nothing had happened. And this morning,
9 I found that the debtor and the TCC had entered into an
10 amendment to the RSA. So what is your belief is the
11 appropriate thing to do today, Mr. Karotkin? In other words,
12 what do you want me to do when we -- whether it's in the next
13 two minutes or after a break?

14 MR. KAROTKIN: You could approve the RSA in the next
15 two minutes.

16 THE COURT: And Mr. Julian, what do you want me to do?

17 MS. DUMAS: Your Honor, Ms. Dumas will be --

18 THE COURT: Never mind. Or Ms. --

19 MS. DUMAS: -- handling the RSA.

20 THE COURT: Ms. Dumas, what do you want -- what do you
21 want me to do if Mr. Karotkin asks me to approve the RSA, as
22 amended, in the last few hours?

23 MS. DUMAS: The TCC would strongly urge the Court to
24 approve the RSA.

25 THE COURT: Okay. Is Ms. Mitchell here?

PG&E Corp., Pacific Gas & Electric Co.

1 UNIDENTIFIED SPEAKER: Your Honor, so would the
2 professionals.

3 THE COURT: Ms. Mitchell, could you just give me a
4 clue on what the governor's position is on this late
5 development? I'm not -- I'm going to have more argument when I
6 figure out what's the right thing to do. I'm not going to turn
7 this into a death camp for endless hearings, and I'm not going
8 to keep people from going to Judge Donato's court at 1 o'clock.
9 So give me a clue on what --

10 MS. MITCHELL: So all --

11 THE COURT: -- the governor's --

12 MS. MITCHELL: -- I was going to say today, absent
13 having to correct anything on the record after Mr. Karotkin
14 gets done, was going to take about -- was going to take about
15 three minutes.

16 I'm Nancy Mitchell. I'm from O'Melveny & Myers, on
17 behalf of Governor Gavin Newsom.

18 So maybe I'll just tell you where the governor is, and
19 that may clarify things.

20 THE COURT: I was hoping you'd bring him here today.
21 I think lawyers are invited to bring their clients to the
22 bankruptcy court. He's welcome here at any time.

23 MS. MITCHELL: I'll convey that to him.

24 THE COURT: Okay.

25 MS. MITCHELL: So the -- Your Honor, I think I'm going

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1 to start with the end, and then I'll give you a little bit of
2 background. So the governor obviously has been, I think, very
3 clear that he is concerned that we do not currently have an AB-
4 1054 compliant plan --

5 THE COURT: Right.

6 MS. MITCHELL: -- because it doesn't include the
7 governance, because it doesn't meet the financial requirements,
8 et cetera.

9 Having said that, we do believe that an AB-1054
10 compliant plan can be developed in these cases. I'm not going
11 to tell you it's this plan. We think the parties need to
12 recognize that AB-1054 is not a rubberstamp, and we need to get
13 to the changes that are necessary. And that's a high bar for
14 people. And so we have continued to believe that we would be
15 better off if the settlements in these cases did, in fact,
16 apply to all plans. So I think that that is probably our one
17 issue that we would take up an argument, if we chose to.

18 Having said that, I think that, at the end of the
19 day -- and we conveyed this to the TCC yesterday before they
20 made the decision to amend the RSA -- the governor does respect
21 the TCC's decision, as a fiduciary, to move forward on the
22 victim settlement today. We do support the fact that they
23 believe that this distribution is fair treatment for them and
24 would not stand in the way of that being considered today.

25 THE COURT: Well, I'm glad you said that, because

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1 here's my dilemma. And first of all, I don't like -- I mean, I
2 like progress, and there are different opinions as to what's
3 progress. But I don't like eight hours before the hearing
4 progress that impacts so many people before anyone can even
5 think about it. So one of the things that I wanted to ask you,
6 personally, and not even your client, if he were here, is the
7 following.

8 So I read -- I read the governor's statement --

9 MS. MITCHELL: Um-hum.

10 THE COURT: -- as I'm sure everyone in Northern
11 California did, and I got the message. But then when I read
12 the document that you filed at 12:44 yesterday, I saw a number
13 of things that didn't surprise me. But what left me in doubt
14 was the last sentence.

15 "Therefore, to the extent the proposed settlement
16 proceeds, the Bankruptcy Court should require amendments that
17 allow TCC and consenting fire claim professionals to support
18 any alternative restructuring or deem the fire victim claims
19 unimpaired."

20 Well, I don't think there's any ability for me to deem
21 them unimpaired. It sounds like a wish list that I can't
22 fulfill. But it seemed to me that, notwithstanding the strong
23 words of the governor's letter, the governor's lawyers are
24 saying, but go ahead and approve the RSA, with one tweak.

25 So -- do I read that correctly?

PG&E Corp., Pacific Gas & Electric Co.

1 MS. MITCHELL: Yes, Your Honor. I will say, I don't
2 say much for the governor without him being okay with it, in
3 pleadings or otherwise. And I think, Your Honor, our view is
4 and has been consistently that for this debtor to get out of
5 bankruptcy and for the state to avoid the other actions it
6 might have to take, that this case has to get to conclusion and
7 with AB-1054 compliance.

8 THE COURT: Right.

9 MS. MITCHELL: And that is very, very important to us,
10 and that's not going to change, regardless of what happens here
11 today. We --

12 THE COURT: Correct.

13 MS. MITCHELL: -- believe that as a result --

14 THE COURT: I agree.

15 MS. MITCHELL: -- of that --

16 THE COURT: I agree with you.

17 MS. MITCHELL: -- more optionality rather than less is
18 good for us.

19 THE COURT: Right. But what I -- what was interesting
20 about --

21 MS. MITCHELL: Um-hum.

22 THE COURT: -- reading your response and, frankly, all
23 the responses to the RSA, there were a number of reserved
24 positions, which are understandable; there were a couple of
25 very specific questions that I know Mr. Karotkin can deal with.

PG&E Corp., Pacific Gas & Electric Co.

1 But there weren't many -- there wasn't much of anybody really
2 saying this is a bad --

3 MS. MITCHELL: Right.

4 THE COURT: -- economic resolution or settlement.

5 And so I thought, well, do we defy the governor?

6 "We". The governor doesn't purport to administer bankruptcy
7 laws, nor do I purport to administer state law. And it would
8 seem to me that if I accept the recommendation that I approve
9 the RSA, I'm not -- it's not defying the governor. It's
10 acknowledging that the governor's responsibility is broader
11 than the Bankruptcy Court's. And by approving the RSA, I'm not
12 saying AB-1054 has been complied with or corporate governance
13 is fine or the wildfires or climate change or all the other
14 panoply of things that are not bankruptcy issues are being
15 dealt with.

16 None of them are. In fact, I believe even your
17 position is clear that not even the alternative plan, at the
18 moment, complies with AB-1054.

19 MS. MITCHELL: That is correct, Your Honor.

20 THE COURT: And so it's sort of like, okay, then maybe
21 what I ought to do is listen to the substantive challenges to
22 the RSA and not -- and I don't -- let me try it this way. I --
23 if I grant today's motion, I don't want it -- and it's not a
24 power play saying I know more than the governor does. It's not
25 my role. My role is to enforce the bankruptcy rules. He's got

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1 some bigger fish to fry. We've got a very big fish but not the
2 whole kettle. Right?

3 MS. MITCHELL: Well, it's a lot of fish.

4 THE COURT: Yeah, a lot of fish; I agree. And I'm
5 not -- I haven't been asked to approve corporate governance. I
6 haven't been asked to approve climate or curative measures or a
7 hundred things.

8 MS. MITCHELL: Your Honor, I think that's actually
9 right, and that is why we conveyed to the TCC that, at the end
10 of the day, we thought that they should exercise their
11 fiduciary duty. And the governor did not intend to stand in
12 the way of the TCC doing that or ask Your Honor not to do the
13 job of administering the bankruptcy.

14 THE COURT: I'm neither criticizing the governor nor
15 his counsel. I'm clarifying what the deal is.

16 MS. MITCHELL: No, I wanted you to know that is where
17 we came out as well.

18 THE COURT: And you and I know, and every experienced
19 lawyer in this room knows, that I still have a responsibility
20 at some point -- not today, but at some point -- to make a
21 finding of feasibility, including the critical finding that
22 confirmation of whichever plan is not likely to be followed by
23 a need for further reorganization.

24 So that's sort of the clue that I got from the
25 governor's letter, is that the governor, among other things,

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1 says, I don't think that the deal is doable. But he didn't
2 say, but it's a bad result of the fire victims or the
3 subrogation group.

4 MS. MITCHELL: That's correct.

5 THE COURT: Yeah.

6 MS. MITCHELL: Nor did he say that the debtor could
7 not, at some point, develop a confirmable AB-1054 compliant
8 plan. We just don't think it's this plan.

9 THE COURT: Right. That's right. So if I could turn
10 it around to you the way I'm interpreting the governor's
11 letter, as modified by your legal statement on his behalf, is
12 that if I approve the RSA because I'm satisfied for the
13 bankruptcy issues that have been addressed -- and there are
14 issues; there are releases and lockups and all these other
15 things -- somebody still has a lot of work to do, a lot of
16 heavy lifting at the OII, and then in the political arena, in
17 the marketplace. And they have to come back and get a
18 confirmable plan.

19 And the governor, at the moment, doesn't believe there
20 is a confirmable plan. But that isn't the issue today.

21 MS. MITCHELL: That is correct, Your Honor.

22 THE COURT: Okay. All right. Thank you, Ms.
23 Mitchell.

24 So Mr. Karotkin, what I propose is the following.
25 I -- and I'm sure you have gone through all the oppositions.

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1 And I have two, and I want to hear from you and from the
2 opponents. But I have a short list of just my own questions.

3 And so I thought if I gave you my questions, then it
4 would be appropriate to perhaps take the break. And then we
5 could resume after Judge Donato's hearing. And I would go down
6 the list of any -- for any of the counsel -- and there are
7 several -- who want to be heard on specific objections.

8 Is that -- does that work for you, or would you like
9 to do it some other way? I want you to tell me what you want
10 to do.

11 MR. KAROTKIN: I know that, Your Honor, I would like
12 to at least make an opening argument. I'm -- and I'm happy to
13 address -- and hear what your questions are and address your
14 questions as well. I know that --

15 THE COURT: Well, some of them are very detailed. I
16 mean, just -- look, I went through the thing, and I just had to
17 circle, like, what does this mean, and what does that mean. I
18 mean, there probably -- you might -- half of them, you might
19 say, well, didn't you read the thing, dummy? And I read -- a
20 lot of reading.

21 MR. KAROTKIN: Yeah.

22 THE COURT: Okay.

23 MR. KAROTKIN: I don't think -- I don't think I would
24 say that.

25 THE COURT: Go ahead and make your opening statement

PG&E Corp., Pacific Gas & Electric Co.

1 then.

2 MR. KAROTKIN: Do you want me to -- do you want do
3 that before you break?

4 THE COURT: No, you make -- well --

5 MR. KAROTKIN: It's up to you.

6 THE COURT: Why don't you -- why don't you tell the
7 world, tell me, the audience, the media, the public, what --
8 where are now based upon the response by the debtor and the TCC
9 to the governor's -- I won't say veto -- the governor's
10 disapproval, but now, as we've heard from his counsel, not
11 quite a -- not quite a veto? Not --

12 MR. KAROTKIN: Yes.

13 THE COURT: -- that he had the -- he doesn't have the
14 veto to veto what I have to do, but he has the veto to tell the
15 rest of us and citizens of California what AB-1054 needs to --
16 how it needs to be dealt with more specifically.

17 MR. ORSINI: Right. And I think, Your Honor, you've
18 put your finger on it, and I think Ms. Mitchell confirmed that
19 the governor is not saying that the debtor's plan cannot move
20 forward. In fact, saying quite the opposite. And as I will
21 mention, there are ongoing constructive, as we've reported,
22 conversations with the representatives of the governor's office
23 to address the concerns he raised. And I think as you just
24 commented, and as Ms. Mitchell confirmed, those issues can be
25 addressed later. And if you were to rule to approve the RSA,

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1 it certainly does not foreclose those issues. And we intend to
2 file a plan that is AB 1054 compliant at the end of the day,
3 and the CPUC --

4 THE COURT: You don't mean literally the end of the
5 day.

6 MR. ORSINI: Not at the end of the day, and the CPUC,
7 but we are convinced, Your Honor, and I think it's clear -- I
8 think it's clear, Your Honor, that by reason of the fact that
9 the tort claimants' committee and the professionals who signed
10 the RSA agreed to the amendment yesterday, agreed to the
11 amendment to eliminate the provision that gave an automatic
12 termination right based on the governor's report. I think
13 they've made it very clear, Your Honor, that they have
14 confidence in the debtor's plan. They want to move forward
15 with the debtor's plan, and they believe that the debtor's plan
16 will be AB 1054 compliant, will address the governor's
17 concerns, will address the CPUC's concerns, and they, Your
18 Honor, together with the other parties to the RSA, as well as
19 Mr. Feldman's clients -- and I would urge you to approve the
20 subrogation RSA as well -- they've all made the determination
21 with the debtor. And again, those are all of the impaired
22 classes in these cases. They have all made the determination
23 that they want to move forward with this.

24 THE COURT: Well, remember, you and I both know, but
25 some people may not know, impaired classes -- excuse me,

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1 unimpaired classes don't get to vote --

2 MR. ORSINI: Right.

3 THE COURT: -- but they still can object.

4 MR. ORSINI: They still can object --

5 THE COURT: Okay. Okay.

6 MR. ORSINI: -- on the basis of the inability of the
7 plan to satisfy the requirements of Section 1129 of the
8 Bankruptcy Code.

9 THE COURT: Right. That's correct.

10 MR. ORSINI: But again, Your Honor, I think it's clear
11 by where we are today that the impaired classes --

12 THE COURT: We're losing you -- you're a little far
13 away from the mic.

14 MR. ORSINI: I'm sorry. That the impaired classes
15 support moving forward together with the debtor's plan. And
16 again, are confident that that plan is confirmable, will be
17 confirmable, will be 1054 compliant, and will be able to
18 address any of the concerns that the CPUC has raised.

19 And I'd like to point out, Your Honor, that the RSA is
20 the product of extensive arms' length negotiations among the
21 parties under the auspices of the mediator that you, Your
22 Honor, appointed, retired bankruptcy Judge Newsome, and fully
23 achieves the goals Your Honor sought in appointing the
24 mediator, a global comprehensive resolution of these Chapter 11
25 cases with the debtors reaching a settlement to be implemented

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1 pursuant to the plan with the last remaining fire claimant
2 constituency.

3 And with this resolution, as I mentioned, now all
4 impaired classes have coalesced around the debtor's plan paving
5 the way for a successful expeditious successful administration
6 of these cases well within the AB 1054 deadline, and also a
7 result that, again, the TCC and the fire claimants and their
8 attorneys believe is the best way to expedite distributions to
9 their claimants and to other creditors in these cases.

10 I'd also like to point out, Your Honor, that with the
11 assistance of bankruptcy judge -- retired bankruptcy Judge
12 Newsome, the parties, with his help resolved the issue with
13 respect to the release and the subrogation claimants' RSA.
14 That was the dispute between the tort committee and the
15 subrogation claimants with respect to how that release would be
16 worded. That has been fully resolved and is incorporated in
17 the plan so there are no issues between the tort claimants and
18 the subrogation claimants with respect to that RSA at all.

19 THE COURT: The release question is still waiting for
20 my ruling on the subrogation --

21 MR. ORSINI: It is, but there was a --

22 THE COURT: -- and it's related. I know they're
23 different but --

24 MR. ORSINI: There was a particular provision that was
25 objected to by the tort claimants' committee.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Right.

2 MR. ORSINI: I think you mentioned that people are
3 free to sign releases. That issue as to the terms of that --

4 THE COURT: But I think you'll see that on my short
5 list of questions --

6 MR. ORSINI: Okay.

7 THE COURT: -- is one of the ones that I think relates
8 to that, yeah.

9 MR. ORSINI: And again, all I'm telling you, Your
10 Honor, is the parties, with the help of Judge Newsome have
11 resolved that --

12 THE COURT: Don't -- you don't have to give him more
13 credit. You said three times about -- good things about him.
14 That's all he gets; three.

15 MR. ORSINI: I've got several more pages to praise
16 him.

17 THE COURT: Just make sure he has an "e" at the end of
18 his name.

19 MR. ORSINI: Yes. There's no confusion here.

20 And again, with respect to impairment, as we made very
21 clear to Your Honor last week during the discussion and
22 argument on post-petition interests, in the event you were to
23 determine that the unsecured creditors were entitled to post-
24 petition interest at a rate other than the federal judgment
25 rate, or that they're entitled to the make whole that will be

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1 argued before the Court next month, the plan will be amended to
2 address your rulings, and will be revised to make it absolutely
3 and abundantly clear that those claimants will be rendered
4 unimpaired under all circumstances.

5 THE COURT: Just an aside, I'm working on a draft
6 written disposition on the post-petition interest. Needless to
7 say, I've been a little bit busy. I'm also prepared at some
8 point, maybe today, to issue an oral ruling on the subrogation
9 group RSA --

10 MR. ORSINI: Okay.

11 THE COURT: -- that I want -- I really needed to make
12 sure I understand what we're doing here, and there are,
13 obviously, a number of questions still about today's motion,
14 not only my questions but, obviously, the objector's question.
15 So go ahead and you want to continue with your statement?

16 MR. ORSINI: Yes, if you don't mind.

17 THE COURT: Sure.

18 MR. ORSINI: And of course you're aware as you
19 mentioned, the governor's letter that was issued on Friday, and
20 as I mentioned the parties to the RSA have amended it to do
21 away with the automatic termination right.

22 THE COURT: Well, if I read it correctly, because it
23 was the world's shortest amendment. It just says we take out
24 3I, but 3I just means that between the debtors and the TCC and
25 the professionals, the governor's signoff isn't required.

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1 MR. ORSINI: Not for purposes of today's hearing.

2 THE COURT: But the governor --

3 MR. ORSINI: Exactly.

4 THE COURT: That's right. And as Ms. Mitchell
5 confirmed, and I state, 1054 is still up there and has to be
6 complied with like all the other provisions of the Bankruptcy
7 Code.

8 MR. ORSINI: No question, nor are anyone's rights
9 being prejudiced with respect to those issues.

10 THE COURT: But the governor has expressed both in
11 his -- excuse me -- in his letter and in his counsel statement
12 concerns about the lockup. So I and you're going to --

13 MR. ORSINI: And I'm happy to address that as well.

14 THE COURT: Well, whenever you get to it on your list,
15 because I -- that, to me, is one of the significant issues
16 and -- that I have to deal with today and that's a today
17 question.

18 MR. ORSINI: Yes, sir, I understand that.

19 THE COURT: Okay.

20 MR. ORSINI: And as I mentioned before, and I think
21 Ms. Mitchell would confirm, we have been engaged in
22 constructive dialogue with the governor's representatives to
23 address the issues he's raising. Those discussions will
24 continue. In fact, there was a meeting with the governor's
25 office this past Saturday in Sacramento with the debtors in

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1 order to address those concerns that he's raised.

2 And as I mentioned, and I don't mean to repeat this,
3 but I think it's important that the parties through the RSA,
4 obviously, believe -- otherwise they would not have agreed to
5 the amendment -- that the debtors and the plan proponents are
6 capable of meeting the government's demands, and that this case
7 can move forward.

8 I will note that the tort claimants RSA, Your Honor,
9 fully resolves this Chapter 11 plan treatment of the remaining
10 fire constituency claims, the debtors already having resolved
11 the claims of the public entities and the subrogation
12 claimants.

13 The RSA achieves a comprehensive resolution and
14 eliminates any reason, Your Honor, to continue the competing
15 plan process.

16 As I mentioned before, impaired classes have agreed to
17 support our plan. One plan, the debtor's plan. There is no
18 longer support for the ad hoc committee's plan.

19 THE COURT: What do I do about it?

20 MR. ORSINI: I'll get to that as well.

21 And the RSA eliminates the substantial cost associated
22 with the estimation proceedings both before Judge Donato in the
23 Tubbs trial in Superior Court. And with all other classes of
24 claims being unimpaired, moving forward and approving the RSA
25 presents a clear path to an expedited successful confirmation

PG&E Corp., Pacific Gas & Electric Co.

1 of these cases well within the June 30, 2020 deadline.

2 Your Honor, I'd like to point out, we have
3 accomplished -- and again, I don't -- I'll have to give some
4 praise to the mediator again -- with the help of the mediator
5 exactly what you asked us to accomplish; exactly. You
6 appointed the mediator to achieve a global resolution; that's
7 what has been achieved.

8 Now, I know the creditors' committee and the
9 bondholders will get up and say well, we're not happy with the
10 plan, you haven't addressed our issues. Well, Your Honor,
11 they're unimpaired. They will be paid in full. There are no
12 issues to address. They have nothing to complain about.

13 And for the senior -- the ad hoc senior noteholders'
14 committee to assert in its objection filed yesterday that its
15 joint plan is superior, to use their words, to the debtor's
16 plan simply ignores the facts, and let's talk about the facts.

17 Their purported joint plan no longer has the support
18 of the tort claimants' committee, and I might remind you, Your
19 Honor, that support was fundamental in your decision to
20 terminate exclusivity.

21 THE COURT: It was.

22 MR. ORSINI: That was the reason you terminated, and
23 that support no --

24 THE COURT: It's what turned it around. You'll recall
25 that I extended it first.

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1 MR. ORSINI: I did, and I read your opinion again this
2 morning. That support no longer exists. That plan never had
3 the support of the subrogation claimants or the public
4 entities; never. And as indicated by Ms. Mitchell and in the
5 governor's pleading filed yesterday, that plan does not satisfy
6 the requirements of AB 1054.

7 THE COURT: Well, but there were no specifics. It was
8 just a throwaway like there's another one out there. But --

9 MR. ORSINI: Well, I wouldn't call -- if you ask Ms.
10 Mitchell --

11 THE COURT: Throwaway is the wrong word.

12 MR. ORSINI: -- I wouldn't call it a throwaway.

13 THE COURT: There was no elaboration, and I'm sure
14 that Ms. Mitchell and Mr. Stamer have had a dialogue on that
15 subject. It wasn't something that needed to be explicated
16 today, that's all.

17 MR. ORSINI: I'm not sure of the extent of those
18 discussions.

19 THE COURT: Okay.

20 MR. ORSINI: Not surprisingly, Your Honor, the only
21 parties that support the ad hoc plan are the bondholders which
22 have no fiduciary duties to anybody, and the reason's quite
23 obvious because they stand to receive in that plan an economic
24 windfall at the expense of rate payers to the tune of three or
25 four billion dollars as I think they even acknowledge in their

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1 papers.

2 Your Honor, the tort claimants' committee with
3 fiduciary duties to all tort claimants and the subrogation
4 claimants represented by Mr. Feldman have made, as I said, a
5 determination that the debtor's plan that encompasses a global
6 resolution is the best way to proceed to get to a successful
7 conclusion of these cases and distributions to their respective
8 constituencies.

9 The only remaining issues, Your Honor, are your
10 rulings with respect to post-petition interest and make whole,
11 which again we'll address. And as I mentioned, of course,
12 we'll address any of the concerns of the governor and the CPUC
13 going forward.

14 Now, with respect to the objections, if you'd like me
15 to get to the objections --

16 THE COURT: Yeah, I'd like --

17 MR. ORSINI: -- I can do that now or later.

18 THE COURT: Why don't -- why don't we go to my
19 questions, and then I want to hear from Mr. Julian or Ms.
20 Dumas. So listen, let's go to my questions. Their discrete as
21 I say. I won't be offended if you tell me that the answer was
22 obvious.

23 So I'm looking at the actual -- the actual RSA, not
24 the term sheet. And I'm looking at page -- starting with page
25 3. There is a reference to, and a definitional term, for the

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1 estimation approval order. Well, I think I know what that
2 order's supposed to do, but I want to know what -- when does
3 that happen and what relief will that order, when granted,
4 provide?

5 MR. ORSINI: That will happen -- I believe there's a
6 time --

7 THE COURT: There's some deadlines later.

8 MR. ORSINI: There's a deadline. I believe it's in
9 March --

10 THE COURT: Okay.

11 MR. ORSINI: -- or prior to the disclosure statement
12 hearing.

13 THE COURT: But what was that -- what would that order
14 say?

15 MR. ORSINI: That order will estimate the amount of
16 the tort liability for purposes of the plan.

17 THE COURT: But isn't that the same -- the very same
18 numbers that are already in the stock?

19 MR. ORSINI: It will be the very same numbers.

20 THE COURT: So --

21 MR. ORSINI: So that will be brought before the Court
22 for a final determination.

23 THE COURT: But my question, then, is what is there to
24 think about? I mean, what would an objection be that the
25 estimation is the right number, the wrong number? In other

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1 words, I -- what I'm trying to do is figure out whether it's an
2 action item or kind of a formality.

3 MR. ORSINI: I think that, frankly, it would be more
4 of a formality.

5 THE COURT: Yeah. I mean, there may be an objection
6 to it, but the point is --

7 MR. ORSINI: There could be an objection that, I
8 suppose someone -- some party could say we don't believe
9 it's --

10 THE COURT: But the way I --

11 MR. ORSINI: -- reasonable.

12 THE COURT: -- the way I read the RSA, if I approve
13 the RSA today and particularly if at the same time or
14 concurrently I approve the subrogation RSA, that just fixes in
15 stone the thirteen and a half billion and the eleven billion.

16 MR. ORSINI: Subject to plan confirmation.

17 THE COURT: Yes, of course, subject to plan -- and
18 subject to anything else going on.

19 MR. ORSINI: And voting on the plan.

20 THE COURT: And some other things happening;
21 insolvency or things, but at least on the face of it --

22 MR. ORSINI: And I think we would need a determination
23 by the Court that that's a reasonable number at that point.

24 THE COURT: Okay. But -- all right.

25 So then -- so going down on the same page, what is the

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1 current status of the exit financing? Is that going to be back
2 on track on a calendar item? If I approve the RSA now, will
3 there be a hearing on the exit financing --

4 MR. ORSINI: Yes.

5 THE COURT: -- in January?

6 MR. ORSINI: I believe it's currently scheduled for
7 the 14th.

8 THE COURT: The 14th. That's right.

9 MR. ORSINI: Yes.

10 THE COURT: Okay. Simple question.

11 So now -- okay. So on the next page, there -- again,
12 it was easy for me to go to the definitions. And so the subro
13 RSA motion, my question really is more for Mr. Julian, I guess,
14 and that is when does the TCC withdraw its objection to the
15 subro motion, and I think I probably know the answer; it's
16 consistent with this approval.

17 Ms. Dumas, can you confirm that? That's just a --
18 again, a formality, right. If I approve today's motion, then
19 your clients withdraw their objection to the subrogation
20 motion?

21 MS. DUMAS: Yes, sir. That is correct. If you'd like
22 further amplification, Mr. Julian can provide it.

23 THE COURT: No, no. I mean, look, there was spirited
24 opposition to the subrogation RSA, and by others as well, but
25 particularly by the TCC. But the RSA TCC motion resolves that

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1 dispute between the TCC and the subrogation group.

2 MS. DUMAS: That is correct.

3 THE COURT: That's all I need for now.

4 And the same -- the same -- now, Mr. Karotkin, I don't
5 want you to tell me what I'm not supposed to know about, but
6 I'm confused as to how the next paragraph and the
7 implementation in 2(a) of the negotiations and discussions with
8 the Tubbs plaintiffs works. So don't disclose what I'm not
9 supposed to know, but how does that get implemented? I don't
10 know what happens.

11 MR. KAROTKIN: The Tubbs settlements will be
12 negotiated. Settlements --

13 THE COURT: Well, it's supposed to have already been
14 negotiated.

15 MR. KAROTKIN: Right. I believe that -- and Mr.
16 Orsini can address that. I believe that those have been
17 negotiated and will -- I think they will be fully documented.

18 THE COURT: Okay. So let -- again, I don't want --

19 MR. KAROTKIN: They will be brought to this Court for
20 approval.

21 THE COURT: I don't want specifics.

22 MR. KAROTKIN: I'm not going to tell you numbers.

23 THE COURT: But if there's a Tubbs plaintiff, Mr. X,
24 and Mr. X agrees to be paid a certain amount of money, does he
25 get paid a certain amount of money or does that amount go into

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1 the pool for what constitutes his claim in the trust?

2 MR. KAROTKIN: That would be a claim to be dealt with
3 by the trust and to be paid pursuant to the trust
4 administration proceedings.

5 THE COURT: It just quantifies his claim.

6 MR. KAROTKIN: It just quantifies his amount.

7 THE COURT: So -- well, as you know, one of the
8 objections by one -- the party or two of the parties today by
9 individual claimants is that that's unfair to other victims.
10 That it seems to me if I read it correctly, and you can confirm
11 this, it simply quantifies that for purposes of knowing what
12 that particular claimant's entitlement is one of the pool of
13 the thousands of people who are beneficiaries of the trust.

14 MR. KAROTKIN: That's correct.

15 THE COURT: And if all goes well and RSA -- excuse me,
16 AB 1054 is honored, then Mr. X will get his money and so will
17 Ms. Y and Ms. E who aren't in the Tubbs fire but whose amounts
18 are estimated or calculated --

19 MR. KAROTKIN: Correct.

20 THE COURT: -- right?

21 MR. KAROTKIN: Yes.

22 THE COURT: Okay. And what happens if the, God
23 forbid, the trust comes up short? Is it prorated among all the
24 beneficiaries including that individual?

25 MR. KAROTKIN: I believe, and again, the trust

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1 procedures haven't been documented yet, and, of course, they
2 will be part of further proceedings before the Court for Your
3 Honor to consider. I believe there would be mechanisms, and I
4 think Mr. Julian referred to it last week, there will be
5 mechanisms in the trust distribution procedures to assure that
6 there are sufficient funds to address all the claims.

7 THE COURT: Okay. So now go back to the individuals
8 that are -- until they reach an immediate settlement in Tubbs
9 will be going to trial next month. What will be the relief
10 sought by this Court? In other words, what -- the motion --
11 this goes over to the next page, page 5 in subparagraph (h), it
12 says that there'll be matters brought before the Court for
13 approval, but what would the Court be approving; just a sealed
14 number of dollar amounts attributable to the named plaintiffs?

15 MR. KAROTKIN: Yes, sir.

16 THE COURT: The named -- not the named plaintiffs --
17 the named preference plaintiffs, who are the ones --

18 MR. KAROTKIN: Yes, sir.

19 THE COURT: -- the short number of people going to
20 trial. And again, that's not going to be public, though,
21 right?

22 MR. KAROTKIN: Correct.

23 THE COURT: That'll be sealed, correct?

24 MR. KAROTKIN: Yes, sir.

25 THE COURT: I'm right?

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1 MR. KAROTKIN: Yes, sir.

2 THE COURT: Okay. And Mr. Julian or Ms. Dumas, if Mr.
3 Karotkin says something that you think is incorrect or
4 incomplete, just interrupt because all I'm doing is trying to
5 clarify --

6 MS. DUMAS: Yeah.

7 THE COURT: -- this document.

8 MS. DUMAS: Thank you, Your Honor. And having been
9 involved in the granular -- at a granular level of those
10 discussions regarding the Tubbs preference claims, I'd be happy
11 to amplify --

12 THE COURT: No, you don't need to --

13 MS. DUMAS: -- if the Court requires further.

14 THE COURT: -- as long as -- I don't want to turn this
15 into a long hearing about something that isn't really critical
16 to today. So I don't --

17 MS. DUMAS: No, so far, so good. Mr. Karotkin is
18 doing great. There --

19 THE COURT: Hey.

20 MR. KAROTKIN: That's the first time she's said that
21 in a year, by the way.

22 THE COURT: Yeah, get her to say it. Get her to --
23 get her to sign your -- autograph your program here.

24 Okay, next page, Mr. Karotkin, page 7, the very bottom
25 of the page, I take it the culprit of section 4.19(f)(ii) has

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1 been fixed?

2 MR. KAROTKIN: That's what I referred to earlier.

3 Yes, sir.

4 THE COURT: Okay.

5 Ms. Winthrop, did you --

6 MS. WINTHROP: Yes, Your Honor, if I may be heard on
7 that issue.

8 THE COURT: Yeah. I mean, I'm trying to -- I'm trying
9 to just do my preliminary, but if you want -- if there's
10 something you can just add -- I mean, I know you said you
11 agreed to -- for your client, some of the resolution. But go
12 ahead.

13 MS. WINTHROP: Your Honor, Rebecca Winthrop on behalf
14 of the Adventist claimants. Yes, we've had very productive
15 discussions with counsel for the ad hoc subrogation committee.
16 However, we thought we had reached an agreement on the form of
17 the stipulation this past Friday, but the debtor made changes.
18 And now, we've received a whole new round of changes.

19 THE COURT: Okay.

20 MS. WINTHROP: So an agreement has not yet been
21 released. But the idea is to exempt Adventist from that
22 section.

23 THE COURT: Okay, but on this particular point, this
24 is an agreement that need to be resolved by the TCC and their
25 professionals. I mean, it's a more specific reference to a

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1 section. Doesn't --

2 MS. WINTHROP: It's my understanding we're talking
3 about the release section, Your Honor. Are we not? Did I miss
4 my reference?

5 THE COURT: No, I think you did, but I think the
6 numbers changed. I mean, I -- listen, you -- let's -- let me
7 run through my short list. And if there's an issue here, we'll
8 come back to it later.

9 MS. WINTHROP: Thank you, Your Honor.

10 THE COURT: Okay?

11 All right, so Mr. Karotkin -- okay, I think those are
12 my immediate questions.

13 So I'm not in a position to give you a ruling without
14 hearing from everyone. What's going to happen when you send
15 Mr. Orsini upstairs? What are you going to tell the judge
16 upstairs, Judge Donato?

17 Mr. Orsini, what are you going to tell Judge Donato,
18 that Montali's working on it?

19 MR. ORSINI: I'm certainly not going to presume to
20 tell him how you're going to rule. I think what we expect --

21 THE COURT: No, I said working on it. I didn't say --

22 MR. ORSINI: -- I think what we expect to tell Judge
23 Donato is that the issues are still before this Court, that --
24 you'll tell me if you disagree with this statement. But I
25 think that Judge Montali understands the urgency of addressing

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1 the RSA motion and that I certainly believe it's the debtors'
2 position and, I believe, the TCC and the subrogation claimants
3 agree that, for the time being, as Your Honor works on the
4 motion, we ought to leave the estimation proceedings paused.
5 And once we get an order from this Court on approval of the
6 RSA, if that's how the Court resolves the current motion, the
7 estimation proceedings will forever be on pause.

8 And if, for some reason, this Court were to decide not
9 to approve the RSA, then we can come back to Judge Donato to
10 discuss what that means in terms of the schedule --

11 THE COURT: Well --

12 MS. WINTHROP: -- going forward.

13 THE COURT: -- I didn't know that we would take as
14 long as we did, even this morning. And if we hadn't taken the
15 time for Ghost Ship, particularly, maybe we'd be done. I don't
16 know. But I'm not going to rush it. This is something that's
17 changing by the hour. And I have about ten objections, some of
18 which perhaps are not really objections. They're reserves.
19 But there are a couple of substantive objections, particularly
20 from the OCC and the ad hoc bond committee. And I want to hear
21 them.

22 So it may well be that, at 1 o'clock, you'll have to
23 say that you'll back down here around 2 o'clock.

24 MR. ORSINI: We're still working.

25 THE COURT: And -- but I read it correctly if I -- and

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1 you confirm this -- if I say yes, I will approve the RSA, then
2 leaving aside when I actually sign an order, presumably that
3 means the estimation is off and the Tubbs trial estimation is
4 off.

5 MR. ORSINI: That's correct, Your Honor.

6 THE COURT: Correct? Okay.

7 MR. ORSINI: Correct.

8 MR. FELDMAN: Your Honor, just very --

9 THE COURT: Yes.

10 MR. FELDMAN: -- briefly --

11 THE COURT: Yes, Mr. --

12 MR. FELDMAN: -- obviously, there are two RSAs --

13 THE COURT: Name -- I know your name, but get it on
14 the record.

15 MR. FELDMAN: Sure. For the record, Matthew Feldman
16 on behalf of the ad hoc group of subrogation claimants. I
17 don't want to -- I don't want to be overlooked in this, Your
18 Honor.

19 THE COURT: You won't be.

20 MR. FELDMAN: We are also a party to a subrogation.
21 We are also a party to Tubbs. So the rulings need to be with
22 respect to both --

23 THE COURT: Mr. Feldman --

24 MR. FELDMAN: -- motions.

25 THE COURT: -- you might recall, I asked if you wanted

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1 me to withhold on ruling --

2 MR. FELDMAN: I did, and we did --

3 THE COURT: -- and you told me --

4 MR. FELDMAN: -- Your Honor, through Friday.

5 THE COURT: -- you told me to wait till Friday.

6 MR. FELDMAN: Yes, yes.

7 THE COURT: Well, it's not Friday. It's Tuesday. And
8 you --

9 MR. FELDMAN: That was last Friday, though, Your
10 Honor.

11 THE COURT: I know. So has it been extended? Have
12 your hundred insurance companies all agreed to give me a little
13 more time?

14 MR. FELDMAN: We have extended through tomorrow, Your
15 Honor. And if you need more time, we will. But I will argue
16 this afternoon why you should not take that time.

17 THE COURT: As far as I'm concerned, the matter stands
18 submitted, and it's waiting for me to announce a ruling. And
19 the question has to do with whether I've heard anything today
20 on the TCC RSA that would influence me. And I intend to issue
21 orally on both of them later this afternoon unless something
22 goes off the rails here.

23 MR. FELDMAN: Thank you, Your Honor.

24 THE COURT: Okay, all right. So let me do -- okay.

25 So Mr. Orsini, let's stop on that.

PG&E Corp., Pacific Gas & Electric Co.

1 So here's what I'm going to do. I'm going to run
2 through a brief roll call, if you will, of the objections that
3 were filed in the last few days. And I will not necessarily
4 invite oral argument at this point because I want to stick with
5 my commitment to give people a humanitarian break. I'm told by
6 my staff that I shouldn't use the word "personal convenience".
7 I believe Chairman Nadler used the term humanitarian break, so
8 I'm going to channel Chairman Nadler and do it his way and have
9 humanitarian breaks.

10 But I've looked at all the objections and considered
11 them. And here's how I read them. I have one from Attorney
12 Astelford (phonetic) for some of the file claimants, and his
13 objection really seems to be more about the different treatment
14 of the Tubbs victims compared to others. And I believe that
15 that's been dealt with, for the most part, by Mr. Karotkin's
16 explanation and answer to my questions. But if Counsel wishes
17 to be heard, I'll take that up after the break.

18 Mr. Feist, representing other victims, had once again
19 raised the question of equal treatment and treating the Tubbs
20 plaintiffs differently. And I don't think that they really are
21 treated differently, as he had said, but I will -- if he wants
22 to be heard on that, I'll listen to it.

23 The next in order -- and by the way, I kind of sorted
24 the objectors out in terms of function, for my own thinking.
25 So then, I come to the Adventist, Feather Canyon (sic)

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1 claimants. And there are a number of things that their
2 counsel, Ms. Winthrop, has raised. And I think, for the most
3 part, her objections go to time to review the plan, and I
4 agree. None of us have had time to review the plan and to get
5 more involved in understanding about the fire victim trust and
6 the resolution procedures. Those are all good questions. I
7 don't think they are action items for today.

8 She wants the TCC to be involved more in terms of
9 creating the terms and the ground rules on the trust and the
10 TCC to have an oversight function. Again, I don't read her
11 objections to being very specific to today's motion.

12 And then, finally, I thought she had a good
13 suggestion, but perhaps more for counsel to discuss offline,
14 not in my presence, as to whether there should be some sort of
15 a temporary allowance procedure for voting purposes. But I
16 don't think that's relevant to today's motion.

17 For the Cal agencies, again, there's a reservation of
18 position and no specific opposition to the TSA, although Mr.
19 Pascuzzi, I believe, stated that if the parties waive the
20 governor's termination right -- they want to reserve their
21 rights -- well, he's -- the parties have waived it, and the
22 state agencies can reserve their rights. Same, largely, with
23 the United States, FEMA -- Mr. Troy for FEMA and the other
24 federal agencies, that it didn't seem to me there was any
25 substantive objections to the RSA, but more a reservation of

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1 rights and familiarity with the procedures on estimation. And
2 I second-guessed that. I can't expect, in this time frame that
3 we're dealing with, anybody's had a chance to even absorb those
4 things, let alone spell them out.

5 The United States Trustee objected about the timing of
6 the motion. I will overrule that objection. And we're
7 considering this motion today on a short notice. But the
8 United States Trustee did have a substantive objection about
9 not to circumvent the plan process. And I believe that that's
10 not a -- I don't believe the plan process is in jeopardy.

11 And the United States Trustee has also raised
12 questions about the application of the releases. I will
13 address the releases when I hear from counsel and when I deal
14 with the question of releases a little later this afternoon.

15 The California Public Utilities Commission has once
16 again not opposed the merits of the RSA but -- so much -- and
17 as I read in CPUC's papers, a deference to the debtors'
18 business judgment, but reserving the right to raise the kind of
19 issues that are both confirmation issues or, more importantly
20 for the CPUC, the OII proceeding pending before that agency,
21 and also anything that might implicate classification.

22 Getting more substantively, the official creditors
23 committee focuses, I think, largely on the lockup issue and the
24 question of whether it's appropriate to approve an agreement
25 that locks up the professionals and the OC -- excuse me -- the

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1 TCC to commit it to this plan. And I'll hear about that, any
2 further argument on that.

3 The official creditors committee also has identified
4 the -- and raised the question of the assignment of the causes
5 of action against third parties, questioning whether that's
6 appropriate since those -- their very same third parties are
7 necessary for the company to comply with its future obligations
8 under California law. And I think that's part and parcel of
9 the governor's mission and the message from AB 1054.

10 The official creditors committee also raises the
11 question that I think is a nonissue, but I'll hear from them.
12 And that is an insolvency out. Well, I don't know that I could
13 find a particular insolvency out in the TCC RSA, but there is
14 an insolvency out in the subro RSA. And there is an insolvency
15 out in the applicable law. So I think that if -- and then
16 maybe there's some specific saving language in the TCC RSA.
17 But I believe if the situation were -- presented itself that we
18 had an insolvent situation, that as a matter of course, that I
19 don't think the RSA could survive.

20 And the OCC raises the question about should the
21 estimation proceedings begin? And the answer is, obviously,
22 back to the question. One of the debates that I have to
23 struggle with is what happens if I approve the TCC RSA, and
24 then it goes off the track and no longer is on track to
25 confirm? Well, that's a question that we all have to deal

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1 with. But I don't think the fact that the TCC RSA may stumble
2 down the road is reason enough to deny approval of it today,
3 unless it's a foregoing conclusion that it can't possibly
4 survive. That's another question.

5 The ad hoc noteholders committee raised some of the
6 same questions about wanting to keep the estimation in place
7 and also takes issue with the lockup, and that will be
8 something we attend to after the break.

9 I would add further that the ad hoc noteholders also
10 seem to revisit the whole question of post-petition interest
11 and the make whole provisions. And I don't think those are
12 relevant to today.

13 Excuse me. I misspoke. Those are objections that are
14 raised more by BOKF, not so much by the ad hoc committee.

15 So the securities plaintiffs have reserved their
16 position. The City of San Jose has stated its views on what
17 ought to be, depending on how the Court should be focusing on
18 safety and health issues and operational issues, but I didn't
19 read from the City of San Jose a specific challenge to the
20 particulars of the TCC RSA.

21 And Mr. Abrams, who filed a late opposition, once
22 again takes issue with including the governmental agencies into
23 the pool, the -- what we'll call the thirteen-and-a-half-
24 billion-dollar pool. And he also seems to want to let the
25 Tubbs fire victims have their day in court. I'm not prepared

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1 to be persuaded by that argument, particularly in view of the
2 role played by the TCC and the professionals, to the extent
3 that they are a functioning group that is separate from the
4 TCC. And I then would not be inclined to be persuaded to
5 carry -- change my -- excuse me -- to adhere to Mr. Abrams'
6 suggestion.

7 And the final list of objections that I reviewed are
8 the governor's comments, which I've already addressed.

9 So unless, Mr. Karotkin, you want to add anything
10 further at this point -- well, actually, having said that, Mr.
11 Julian or Ms. Dumas, is there something you want to say now,
12 before we break, about what should happen and why I should
13 approve the TCC RSA and, in effect, not keep the TCC locked
14 into the plan that, until nine days ago, they were supporting,
15 the alternative plan?

16 And this is brief -- just brief because -- I won't cut
17 anybody off. I just want to stick with our time schedule here.

18 MS. DUMAS: Absolutely. Thank you, Your Honor.
19 Cecily Dumas of Baker and Hostetler on behalf of the official
20 committee of tort claimants. Two quick points. One is a point
21 of clarification. I think Mr. Karotkin clarified it, but I'm
22 not sure whether the objecting parties on Tubbs understood that
23 the RSA contemplates only the settlement of those sixteen
24 preference actions.

25 THE COURT: That's what I understood.

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1 MS. DUMAS: And it appeared from one of the objections
2 that the party who represents Camp victims may have believed it
3 extended beyond that. I just wanted to make that --

4 THE COURT: But do you -- did I get it right that
5 those sixteen people, they will agree to amounts that are
6 sealed, but they don't get a check? They don't get paid.
7 Those amounts are included as part of their entitlement. And
8 actually, that liquid -- excuse me -- liquidates their claim
9 that participates in the trust.

10 MS. DUMAS: That's absolutely correct, Your Honor.
11 There is no immediate payment. The idea behind this portion of
12 the RSA -- and it's a critical portion -- is that these people
13 are, in order to qualify for preference on the trial calendar,
14 are elderly. And it was felt that it's in -- both the debtor
15 and the TCC and the claimants' counsel agreed that it would be
16 best to allow them to have their claims liquidated through
17 settlement at this point in time.

18 And the other aspect of that, besides their personal
19 circumstances, was the fact that, as of January 7th, a Tubbs
20 liability and damages trial would start in --

21 THE COURT: Right.

22 MS. DUMAS: -- San Francisco Superior Court.

23 THE COURT: But it would stop -- it would stop under
24 this, but Mr. X and Ms. Y --

25 MS. DUMAS: Yes.

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1 THE COURT: -- they would have in hand an order that
2 says they have a claim of X dollars --

3 MS. DUMAS: That's absolutely correct.

4 THE COURT: -- negotiated but confidential, at this
5 point --

6 MS. DUMAS: Yes.

7 THE COURT: -- number.

8 MS. DUMAS: And not to be set for the debtors, not to
9 be set as precedential with respect to liability for any other
10 Tubbs issues. And the concept is is that these individuals who
11 went out ahead of everybody else have their settlements, but if
12 the whole thing falls apart, which we deeply hope it does not,
13 then Tubbs liability and damages would be rolled into the
14 estimation proceedings, and resulting in San Francisco Superior
15 Court proceedings ending once and for all with the
16 settlement --

17 THE COURT: And if I --

18 MS. DUMAS: -- of these sixteen cases.

19 THE COURT: -- and if I read the document correctly,
20 no matter what happens in the confirmation process, the
21 superior court's role ends.

22 MS. DUMAS: Ends. That's --

23 THE COURT: And if those --

24 MS. DUMAS: -- that's right.

25 THE COURT: -- sixteen people or anyone else, if Tubbs

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1 fire is litigated, it'll then be litigated here in the
2 district -- or estimated in the district court.

3 MS. DUMAS: That is correct, Your Honor. I don't
4 believe we've told Judge Donato about his added role, yet, but
5 that's what's contemplated by the RSA.

6 THE COURT: Why don't you tell him that you're hopeful
7 that the Court will confirm a plan and --

8 MS. DUMAS: We --

9 THE COURT: -- that it will be feasible?

10 MS. DUMAS: -- we sincerely hope that it won't be
11 necessary for him to hear estimation proceedings.

12 The other point I wanted to make before argument is
13 simply to let the parties who have come to the courtroom -- and
14 we greatly appreciate the high attendance, it's an important
15 hearing for all Tort claimants today -- is that the settlement
16 among the equity sponsors, the debtors, and the tort claimants
17 and TCC was very difficult, took many weeks, hard-fought, a lot
18 of compromise. It has, at this point, been supported by over
19 seventy percent of the -- lawyers who represent over seventy
20 percent of tort claimants. So it's not only the official tort
21 committee, which has a fiduciary obligation to all tort
22 claimants, but the lawyers who represent the vast majority in
23 number of claimants are strongly in support of this.

24 We see this as the most expedient path for the tort
25 claims to be estimated in an allowed amount. And for the

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1 debtor, we took the Court's concerns earlier in the case at
2 heart, to have the timing of AB 1054 met. This is by no means
3 a perfect solution. It was by no means the intention for those
4 who objected to this portion of the tort claimants to take
5 almost twenty percent of the stock in reorganized PG&E or
6 payments over time, but we have done so in the interest of
7 allowing this entire case to move forward.

8 This was not an easy decision. It was not an easy
9 negotiation. And we -- I simply wanted the Court to understand
10 that many, many, many individuals have been agonizing over this
11 compromise, and strongly urge the Court to consider everything
12 that went into where we hopefully are today.

13 THE COURT: Okay. Thank you, Ms. Dumas.

14 All right. Mr. Orsini, your homework assignment is to
15 go upstairs and show up in Judge Donato's court at 1 o'clock
16 and do whatever you want to do. And tell him that, as soon as
17 he lets you out, fifteen minutes later, you're on duty here.
18 But when he first lets you out, please notify Ms. Barata
19 (phonetic) and anyone else.

20 So my intention here is to adjourn this hearing now
21 and to resume it fifteen minutes or twenty minutes or so after
22 Judge Donato's hearing on the nineteenth floor are concluded.
23 And my intention, unless there's somebody who wishes to do it a
24 different way, I will have -- and I'll give each of the
25 objectors that I named, in order, an opportunity to be heard.

PG&E Corp., Pacific Gas & Electric Co.

1 But I will ask the objectors, use your time
2 efficiently and officiously, in the sense that I don't want you
3 to reinvent the wheel. And if I've already indicated that
4 there seems to be a resolution or simply noted that you are
5 reserving your client's petition, you don't need to say that
6 again. So I really want to hear substantive challenges from
7 parties for their clients who think that I should disapprove
8 the TCC RSA. That's the critical issue on the table today.

9 I'll see you at sometime after 1 o'clock, probably
10 more like around 1:45. Thank you all.

11 (Recess from 12:28 p.m. until 1:36 p.m.)

12 THE CLERK: All rise.

13 THE COURT: Okay. Good afternoon again, everyone.
14 Please be seated.

15 So Mr. Karotkin, by my calculation, I said I would go
16 through the list of the opponents to the RSA. So unless you
17 have any other desires, I'll do that.

18 But let's start with --

19 MR. KAROTKIN: That's fine. Of course, we will
20 respond, sir.

21 THE COURT: Sure.

22 Mr. Astleford, are you here, or do you wish to be
23 heard?

24 MR. ROYE: Your Honor, Ken Roye.

25 THE COURT: All right, Mr. Roye. Uh-huh.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. ROYE: Joseph's colleague. I'd like to address a
2 few comments to you.

3 THE COURT: Yeah, briefly. Uh-huh.

4 MR. ROYE: We have practiced in Chico, California for
5 years. We've sued PG&E eight separated times in seven
6 counties. We took them to trial in Tehama County in 1995
7 successfully in the Campbell complex fire, which, at that time,
8 was the fifth largest fire in California history. It was over
9 139,000-acre fire.

10 We've sued them in eight counties in California. And
11 when we learned that the RSA included provisions that our fire
12 clients had to accept stock in the company that ruined their
13 lives, we thought that was both callous and unthought-out. It
14 seems like the committee was in a rush to get anything done.
15 It didn't consider what we're going to have to do when we tell
16 those people. As you indicated earlier -- what if something
17 catastrophic happens between now and the end of the bankruptcy?
18 What if Napa gets burned to the ground or Cloverdale or some
19 other -- Paradise before this ends? What do we think that
20 stock's going to be worth then?

21 When we arrived here in town yesterday, the first
22 thing we saw on the news was that after the governor made his
23 statement, the stock plummeted fourteen percent. In the
24 meantime, the RSA for the subros, they don't have to bear the
25 stock. They have a small amount of stock compared to this.

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1 And yet, those companies, when the underwriters told them to go
2 ahead and sell these fire policies in areas where PG&E is
3 providing electrical service to their insureds, they went ahead
4 and took the risk. They also have gigantic portfolios of their
5 own, and they're in a much better position to absorb the loss
6 than the fire clients are.

7 The last thing is we're going to have to go tell them
8 that the best we could do for them was to get stock in the
9 company that ruined their lives. So we object to that.

10 THE COURT: What happens if the company successfully
11 confirms its plan and the Court makes a finding that the plan
12 is feasible and finds that the company does not need further
13 reorganization? Don't you think maybe the stock will go up?

14 MR. ROYE: Well, I'm --

15 THE COURT: Isn't that likely?

16 MR. ROYE: I don't play the stock market, for that --

17 THE COURT: No, I don't, either.

18 MR. ROYE: -- reason, Your Honor.

19 THE COURT: But isn't that predictable, if that
20 happens?

21 MR. ROYE: I have no way of knowing that, Your Honor,
22 and I don't think that will happen.

23 THE COURT: Okay. Well --

24 MR. ROYE: I know --

25 THE COURT: -- but what do you want me to do?

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1 MR. ROYE: Well --

2 THE COURT: If I disapprove it, this is the product of
3 negotiated and mediated tradeoffs. And I understand your
4 concerns about what the subrogation group is getting. But the
5 TCC and the debtor struck a deal. If I disapprove it, what's
6 next?

7 MR. ROYE: Well, we were not privy to that as we're
8 not on the committee. I'm sure they did the best that they
9 could. However, we have to look at this. Our community --
10 that fire burned right into the edge of our community. We have
11 about 100,000 people at our -- we have a beautiful city.

12 THE COURT: You do. I agree.

13 MR. ROYE: Our neighbors in Paradise, 30,000 of them
14 were displaced overnight. We had to absorb 15 or 20,000 of
15 them, and the rest are scattered to the four winds. And now,
16 we go and tell them, well, here's what we got you. We got you
17 half of your payment. It's going to come from the company that
18 ruined your life. Now, there's something wrong with that.

19 THE COURT: But Mr. Roye, just one more point. Do you
20 think I should disapprove it and take what happens next? Which
21 I don't know what happens next. I don't know that you know
22 what happens next.

23 MR. ROYE: What I would ask you to do, Your Honor, if
24 this is going to be renegotiated, to use your good offices to
25 make sure this doesn't happen.

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1 THE COURT: Okay.

2 MR. ROYE: Okay? The last point we made was about
3 Tubbs because all of our claims are in the Camp fire.

4 THE COURT: Did you hear that conversation I had this
5 morning?

6 MR. ROYE: Yes, I did, Your Honor. And --

7 THE COURT: But that didn't satisfy you?

8 MR. ROYE: -- I think it -- well, it may not suffice.
9 But our idea was that, based on our experience -- we've also
10 litigated in three different states besides California against
11 utilities, and we've represented thousands of people. And my
12 thinking is -- and this has been our experience -- when you
13 have two points of origin, when you have battling causation
14 questions, the proof and the persuasion gets very difficult.

15 So I just hope -- and what's going to transpire next,
16 that those are key factors in the amount that is going to be
17 allocated to the Tubbs stakeholders.

18 THE COURT: Well --

19 MR. ROYE: It won't be fair to the remaining victims.

20 THE COURT: Well, there's no --

21 MR. ROYE: They get a free ride --

22 THE COURT: -- there's no issue today on how, if I
23 approve this, the thirteen and a half billion are allocated
24 among the fire claimants. That's for another day and another
25 process. There just is not -- there's nothing here on the

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1 table.

2 MR. ROYE: Oh, I know.

3 THE COURT: Okay.

4 MR. ROYE: I understand that. I'm making the comments
5 just in the hope that I can influence your thinking as this
6 process plays out.

7 THE COURT: Okay. Thank you, Mr. Roye.

8 MR. ROYE: Thank you, Your Honor.

9 THE COURT: Debtor want to respond or submit a matter?

10 MR. KAROTKIN: Would it be easier if we just responded
11 at the end, Your Honor?

12 THE COURT: No, I'd rather -- because they -- if you
13 don't mind, let's do it in step because this is -- as I said
14 before, I consider the objections into sort of different
15 categories. And so let's do it this way.

16 MR. KAROTKIN: Well, I think Your Honor responded
17 appropriately. In any event, there will be a right to vote on
18 this plan by the fire claimants. And if they're unhappy, they
19 can express it through their vote.

20 THE COURT: Okay. I'm going to withhold -- I'm not
21 going to make a ruling one by one. I'm going to take them all
22 down.

23 Let's go with Mr. Feist.

24 MR. DE GHETALDI: Your Honor, Your Honor --

25 THE COURT: Yes?

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1 MR. DE GHETALDI: Could I just clarify one thing about
2 the --

3 THE COURT: For the record -- I know your name, but
4 you need to state it.

5 MR. DE GHETALDI: Thank you, Your Honor. Dario de
6 Ghetaldi on behalf of fire claimants. Mr. Roye, among others,
7 has not quite understood the cash and stock components of the
8 plan.

9 There's nothing in the RSA, and we do not contemplate
10 at all, forcing victims to take stock. They will have the
11 opportunity to take all cash or a mixture.

12 THE COURT: And am I right if the market -- if the
13 company emerges and the market goes up, that's good for the
14 trust, right?

15 MR. DE GHETALDI: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. DE GHETALDI: And we've been told that it could go
18 up as much as thirty percent.

19 THE COURT: Well, if I make a determination that the
20 company is likely to be reorganized and likely to need further
21 relief, I probably won't be able to confirm the plan, will I?

22 MR. DE GHETALDI: Right.

23 THE COURT: Okay.

24 MR. DE GHETALDI: Thank you.

25 THE COURT: Thank you.

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1 All right. Mr. Feist, are you here for your client?

2 MR. FEIST: Yes, Your Honor.

3 THE COURT: All right. Again, I don't want to
4 reinvent the wheel, but let me see what you want to say.

5 MR. FEIST: Joe Feist, appearing on behalf of Camp
6 fire victims. As specified in our rule 2019 disclosure, in
7 light of information provided me after the filing of the
8 objection as well as argument here today, we'd like to withdraw
9 our objection.

10 THE COURT: Thank you.

11 MR. FEIST: Thank you, Your Honor.

12 THE COURT: All right. Ms. Winthrop, I had you next.
13 And as I said, you covered a lot of these items. So tell me
14 what you want to revisit.

15 MS. WINTHROP: Thank you, Your Honor. I just wanted
16 to correct a couple of misstatements -- or a couple of
17 statements that have been made on the record. I also want to
18 express my appreciation to Your Honor because you, frankly,
19 filled in some of the gaps that we've had in terms of how this
20 is all going to work.

21 First of all, there was a statement by the debtors of
22 the fire claimants believe that this is the best way to proceed
23 and that they have support of all of the fire victims. So
24 Adventist Health has over a billion dollars' worth of claims.
25 Feather Canyon (sic) has ninety-five million dollars. We are

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1 two of the largest property damage claimants. While the debtor
2 may have support in numerosity, there's no indication that the
3 property damage claimants are in fully support of the plan as,
4 apparently, the personal injury claimants.

5 So I just wanted to correct that for the record.

6 THE COURT: But remind me, did you object to the
7 subrogation RSA? I can't --

8 MS. WINTHROP: Yes, we did, Your Honor.

9 THE COURT: -- I can't keep track of them all.

10 MS. WINTHROP: Yes, we did.

11 THE COURT: Okay. But largely on the reliefs issue,
12 as I recall.

13 MS. WINTHROP: Yes, we did.

14 THE COURT: Yeah, okay.

15 MS. WINTHROP: Yes, we did. And we have been
16 successful in resolving that piece of the pie, Your Honor.

17 THE COURT: Right, right.

18 But what about your other suggestions that -- isn't
19 that for another day, the victims to get the TCC more involved
20 in the creation of the trust and the implementation?

21 MS. WINTHROP: Well, we would like to -- so first, we
22 have two concerns in that regard where we'd like the Court to
23 consider now. So first of all, the RSA requires all parties to
24 support and not seek to change the amended plan that's being
25 proposed. The amended plan puts the selection of the trustee,

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1 the documentation, and creation of the procedures, and the
2 trust amendment all in the hands of the thirteen personal
3 injury claimant lawyers.

4 What we understand of the thirteen personal injury
5 claimant lawyers who signed off on the RSA and the TCC -- while
6 we are very glad to see that the TCC is still involved in the
7 process, we think that it's very important to have a property
8 damage claimant, preferably one as large as the parties that I
9 represent, to be involved in the process, and if the parties
10 cannot seek to agree, then that process be submitted to
11 mediation just as much as this RSA apparently has done.

12 So it isn't just enough to make the TCC part of the
13 process. We think property damage claimants should be a part
14 of the process, as well.

15 THE COURT: But how do I make that part of the ruling
16 today? And how do I have that flexibility?

17 MS. WINTHROP: Well, first of all, the parties should
18 have the flexibility to make changes to the plan. For example,
19 we did note that the plan have got some items in bracket. That
20 should be subject to further negotiation among the parties.
21 And the Court could order that to mediation, just like they
22 ordered the parties into mediation at this point.

23 THE COURT: Well, I mean, there's no limit. That's
24 there already. If the party -- if the mediator believes it's
25 important to do it, I don't think that it takes another order

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1 to do that. I mean --

2 MS. WINTHROP: Okay.

3 THE COURT: -- but my point is I have to make an up or
4 down decision, I guess, today or a qualified -- say I'll
5 approve it if. And it seems to me it gets awful difficult to
6 start cutting and dicing every single provision in a very
7 complicated agreement.

8 MS. WINTHROP: And I appreciate that, Your Honor. But
9 these pieces of the pie, if you will, are so important that
10 they go to the very heart of the agreement being approved today
11 because it pervades not only the voting procedures, how the
12 entire trust is going to run.

13 THE COURT: But there are two trusts, aren't there?
14 And one trust deals with the subrogation claim --

15 MS. WINTHROP: Yes, Your Honor. My --

16 THE COURT: -- and the property damage claim.

17 MS. WINTHROP: I'm sorry?

18 THE COURT: Well, where does the property damage -- in
19 your mind, in your view -- the property damage claim not
20 covered by insurance is in the --

21 MS. WINTHROP: Is in the TC- --

22 THE COURT: -- in what we'll call the big trust --

23 MS. WINTHROP: Yes.

24 THE COURT: -- the thirteen-and-a-half-billion-dollar
25 trust?

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1 MS. WINTHROP: Correct.

2 THE COURT: Okay. You're correct.

3 Go ahead.

4 MS. WINTHROP: And even that, we at one point had
5 started to read the settlement agreement as requiring -- or the
6 RSA as requiring multiple trusts within the trust, even knowing
7 that there's just going to be two trusts, the insurer's
8 subrogation trust and the big trust. Even that is helpful to
9 understand, but that the parties should have further
10 involvement of all constituencies in the documentation and
11 procedures that are going to govern the big trust.

12 THE COURT: Okay. How about -- and do you want to say
13 anything more about your suggestion of temporary allowance? I
14 mean, the law permits it if somebody asks for temporary
15 allowance.

16 MS. WINTHROP: Yes, Your Honor. And I appreciate that
17 your comment -- Your Honor's comments earlier this morning
18 when -- because as it stands right now -- and again, this feeds
19 into the concern that we have, that this is -- that we are
20 going to be, in essence, be disenfranchised -- is that the way
21 the plan is set up now is that the plan itself acts as an
22 objection to our claim, thereby shifting the burden of proof to
23 us -- or to claimants, to all fire victim claimants.

24 That is not the pace -- and that the parties are
25 willing to work together to come up with some sort of procedure

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1 so that I don't -- now do not have 400 or so property damage
2 claimants coming in and saying hey, temporary allow my claims
3 for voting purposes. I think that's an important aspect to be
4 addressed.

5 THE COURT: But we're back to one of the issues that's
6 still alive for your client, and that is are you even subject
7 to the estimation to begin with. Because you believe that some
8 of your claims are liquidated, right? Some are not; that's for
9 another day. As I recall, refresh my memory, but your side and
10 the debtor and the two big governmental agencies have all put
11 the estimation liquidation question on hold, pending this
12 resolution. So if I approve these, then we have to go back and
13 revisit that question.

14 MS. WINTHROP: Yes, Your Honor.

15 THE COURT: So to the extent you contend either that
16 the debtors concede, or you contend successfully and persuade
17 me, that your claims are liquidated, then you get a presumption
18 of allowance, unless somebody seeks to disallow, for voting
19 purposes.

20 MS. WINTHROP: But only a portion of our claims are
21 liquidated.

22 THE COURT: Understood.

23 MS. WINTHROP: Yes.

24 THE COURT: But do you think the Court can temporarily
25 allow an unliquidated claim? I haven't thought about it. I

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1 can look, see what the Rule says. We temporarily allowed
2 disputed claims. And if there's an objection to your
3 unliquidated claim, I guess there is a provision for
4 temporarily allowing it. It may be a non-issue if the votes
5 come in correctly, right? It doesn't matter if you're --

6 MS. WINTHROP: Well, then, that raises even more
7 concerns about the provision in the debtors' plan that
8 determines that all claims -- now all fire claimants are all
9 disputed claims. Interesting, disputed, unliquidated claim.

10 THE COURT: I don't know how a paragraph in a plan
11 that hasn't been approved even for disclosure purposes, let
12 alone for the res judicata consequences of a confirmed plan,
13 can suddenly supplant a provision in a rule that says there's a
14 presumption of allowance. Now, I've got enough to deal with
15 today than to worry about that one, but let's see what the
16 debtors' counsel says about that one, and see if we have a non-
17 issue or an issue.

18 Let me just take one look at what -- I ought to be
19 able to answer quickly on temporary allowance claims. I
20 thought I knew these rules.

21 Mr. Karotkin, what's the rule on temporary allowance?
22 Can we do a temporary allowance to an unliquidated claim?

23 MR. KAROTKIN: I think the Court has the authority to
24 temporary allow a claim for voting purposes, whether it's
25 liquidated or unliquidated or disputed.

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1 THE COURT: Yeah, it's in 3018(a).

2 MR. KAROTKIN: I was just going to say that.

3 THE COURT: Yeah. Which sentence, do you remember?

4 Well, I haven't thought, and I don't want to take the
5 time to think about it.

6 Well, is it your view that your plan, as filed on the
7 12th, is the equivalent of an objection to claim? That's a
8 stretch, I think.

9 MR. KAROTKIN: I think that's a stretch, and I think
10 you put your finger on it when you said, well, the plan isn't
11 effective until it's effective, so --

12 THE COURT: Right.

13 MR. KAROTKIN: -- it's sort of putting the cart before
14 the horse.

15 Look, we intend to file a voting procedures motion
16 where all of this can be addressed, as is typical in a Chapter
17 11 case like this. And to the extent that Counsel has issues,
18 we can address those issues.

19 I'd just like to make clear another point that -- and
20 I think Counsel will confirm this -- that we have settled the
21 Adventist objection to the subro RSA --

22 THE COURT: Right.

23 MR. KAROTKIN: -- with respect to the release.

24 MS. WINTHROP: Yes.

25 MR. KAROTKIN: Okay.

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1 MS. WINTHROP: I have already stated that point.

2 MR. KAROTKIN: Okay.

3 THE COURT: Yeah, no. I think we've got that.

4 MR. KAROTKIN: And I really think, to the extent that
5 Counsel has objections, or may have objections to the claims
6 resolution procedures or other items that are going to be
7 drafted and presented to the Court, either in the plan
8 supplement or the disclosure statement, she will have ample
9 opportunity to do that.

10 THE COURT: But I think Ms. Winthrop's the only
11 counsel representing objectors who have raised this question
12 about the procedures for formulating the trust rules and these
13 other things. How do I let them have a seat at the table? Do
14 I send it back to Judge Newsome, or is that something that can
15 be done in -- you know, should I not worry about it for now?

16 MR. KAROTKIN: I don't think there's any reason to
17 worry about it now. Typically, that would be negotiated among
18 the committees and the debtor. And again, that, as I recall
19 the RSA, that is going to be a document filed relatively
20 shortly.

21 THE COURT: Well, Ms. --

22 MR. KAROTKIN: Ms. Dumas is going to --

23 THE COURT: -- Dumas, can you help me?

24 MR. KAROTKIN: And people can be heard, and they can
25 have a right to complain about it. But to have drafting by all

PG&E Corp., Pacific Gas & Electric Co.

1 sorts of people, it doesn't make sense in a case like this.

2 THE COURT: Ms. Dumas, how are we going to solve this
3 procedural dilemma here?

4 MS. DUMAS: Easy. Easy-peasy, Your Honor. Cecily
5 Dumas, on behalf of the official committee of tort claimants.

6 First, it was not -- I saw Ms. Winthrop look over her
7 shoulder pointedly at the debtor. The plan provision that has
8 a statement that claims are disputed is a case management, it's
9 an administrative provision requested by the TCC because there
10 are 70,000 claims, and we could spend tens of thousands and
11 hundreds of thousands of dollars doing individual claims
12 objections. We will set that up administratively in whatever
13 manner the Court wants, but that was not intended to
14 disenfranchise anyone, in particular Ms. Winthrop's clients.

15 Second, Adventist has been robustly involved in these
16 proceedings, and the extent to which the TCC did not include
17 her clients in the mediation process, it's certainly willing to
18 bring her clients in, and have their input in the temporary
19 allowance process and the plan process, and any other way in
20 which they want to be involved in the case. Second -- and I
21 hope we make that clear, that there was not any intent to leave
22 Adventist out of a very difficult settlement.

23 But second, yes, there will have to be a mechanism to
24 allow voting for estimation, or allowance of claims for voting
25 purposes. The TCC has had discussions with the debtors and the

PG&E Corp., Pacific Gas & Electric Co.

1 other plan proponents about how that is going to work. We've
2 had discussions with the mediator about how that's going to
3 work. It's a not easy -- we can't do a one vote per claimant
4 case because of the potential for the government entities to
5 basically swamp the vote for 70,000 individual and business
6 claimants.

7 So it will be proposed. It will be brought before the
8 Court for approval. There will be the opportunity for all the
9 affected parties to object, or have input in that process.

10 I want to focus us back on what we're here for today,
11 which is simply to approve an RSA. I understand there's many
12 voting and confirmation issues that Adventist has raised.
13 Respectfully, they're premature for today's purposes.

14 THE COURT: Yeah, and that may be true, but I just
15 don't want a situation where if I were to sign an order
16 approving this, it would sort of be a gotcha for everything
17 else that might have been raised. And again, I don't want to
18 have lawyers go home saying, my God, I should have filed a
19 reservation of rights objection. You've got to object to
20 what's on the table, not what's not on the table. So I'm
21 satisfied. Are you satisfied with that explanation for now,
22 Ms. Winthrop?

23 MS. WINTHROP: Yes, Your Honor. And we appreciate the
24 TCC's willingness to put all of this on the record, and look
25 forward to working with them closely on these procedures.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Okay. Ms. Dumas, you don't need to come
2 back up to the podium, just a quick question. I should have
3 put this on my first list that I asked Mr. Karotkin to go
4 through, when I had my short questions. Just summarize if you
5 can for me, post-confirmation, what is the role of the Court
6 when there are disputes or matters that have to do with trust
7 administration? And I don't mean -- well, yeah. I mean,
8 generally, does the Court jurisdiction continue, or does it
9 end?

10 MS. DUMAS: Yes. Briefly, as has been described to
11 the Court, the resolution trust agreement and a matrix which
12 describes the treatment of individual claims within the
13 resolution trust will be brought before this Court. Many
14 parties are working on it. It's not an easy document to put
15 together. But that will be filed with the Court and subject to
16 review and approval. That will be the mechanism for how the
17 trust is administered.

18 Among the provisions in that resolution trust
19 agreement, and I believe in the plan, is a reservation of this
20 Court's jurisdiction, the extent to which Your Honor is
21 inclined to take it among the resolution procedures. But in
22 broad brush, so that parties who represent claimants who have
23 not been involved in these many negotiations can understand,
24 the concept is a transparent and objective and easy to
25 understand matrix that allows claimants to see what the

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1 standard settlement would be, based on their circumstances and
2 their losses.

3 The option of, rather than accepting that amount,
4 going into a mediation proceeding -- again, supervised by the
5 resolution trustee and his professionals -- and absent the
6 desire to reach a mediated resolution, every tort claimant is
7 preserving their ability to go to trial and have their claim
8 resolved in state or --

9 THE COURT: No, I understand. That's been something
10 that you and Mr. Julian have made clear --

11 MS. DUMAS: Yes.

12 THE COURT: -- from day one. But the question was,
13 really, the role of the Court.

14 Let's move on to today's agenda. You've answered my
15 question for now.

16 MR. STAMER: Excuse me, Your Honor.

17 THE COURT: Mr. Pascuzzi, or -- oh. Wait.

18 MR. STAMER: Your Honor, I apologize to be taken out
19 of turn.

20 THE COURT: Okay.

21 MR. STAMER: And I'm not going to --

22 THE COURT: Name --

23 MR. STAMER: Again, for the record, Mike Stamer --

24 THE COURT: Mr. Stamer.

25 MR. STAMER: -- from Akin Gump, on behalf of the ad

PG&E Corp., Pacific Gas & Electric Co.

1 hoc committee. Although I brought my package of materials, I'm
2 not here to argue my substantive objection.

3 Everyone in the courtroom who appeared before Judge
4 Donato, and now everyone that didn't appear before Judge
5 Donato, other than Your Honor, and now the public -- because
6 there's press reports about it -- understand that Judge Donato
7 made some pronouncements from the bench. I wasn't there. I'm
8 actually a little surprised the debtors didn't start the
9 afternoon hearing reporting what went on. I think it's
10 significant to, kind of, where things stand. And all I would
11 ask is, before the objections continue -- and we can do point-
12 counterpoint; I won't do either, because I wasn't there -- but
13 I think Your Honor should be in the loop as to what Judge
14 Donato observed.

15 THE COURT: Okay. That's a fair question.

16 MR. STAMER: Thank you, Your Honor.

17 THE COURT: Mr. Orsini, do you want to respond to
18 that? We'll take the -- we'll put on hold the individual
19 objectors to the RSA here.

20 MR. ORSINI: Yes, Your Honor. Judge Donato did not
21 make any sort of finding --

22 THE COURT: Name.

23 MR. ORSINI: -- or pronouncement.

24 THE COURT: Name.

25 MR. ORSINI: Oh, sorry, Your Honor. Kevin Orsini,

PG&E Corp., Pacific Gas & Electric Co.

1 from Cravath.

2 THE COURT: Well, I'm sure he didn't make a finding,
3 but he --

4 MR. ORSINI: Judge Donato raised the question, in the
5 context of discussing whether or not he should continue to stay
6 the estimation proceedings, pending Your Honor's resolution of
7 the RSA. He raised the question of, well, why doesn't he just
8 take them completely off calendar, because isn't it at least
9 arguable that at this point -- because we have a proposed
10 thirteen-and-a-half billion-dollar settlement -- that is the
11 number for estimation purposes, even if the settlement does not
12 get approved.

13 What I explained to Judge Donato is that there are
14 circumstances in which we may have to go to estimation. I
15 believe I also said that everyone in that courtroom, and I
16 think everybody in this courtroom, hopes that's never the case.
17 But the thirteen and a half billion dollars, as I explained to
18 Judge Donato, is a settled value of the claims.

19 THE COURT: Right.

20 MR. ORSINI: It is an amount that is part of a whole
21 series of give and takes --

22 THE COURT: No, I understand that.

23 MR. ORSINI: -- as part of an extensive negotiation of
24 puts and calls.

25 But I think that the point you say you understand,

PG&E Corp., Pacific Gas & Electric Co.

1 Judge Montali, I think is the key point, that in the, I hope,
2 unlikely event that the Court does not approve this settlement,
3 or if this Court does approve the settlement and then for some
4 reason none of us ever wants to encounter, that settlement
5 agreement is terminated. At that point, the thirteen and a
6 half billion dollars is gone. And there will be a requirement
7 for estimation proceedings. The TCC --

8 THE COURT: Well, it's going -- excuse me. It's gone
9 because the language of the TCC RSA says it's gone.

10 MR. ORSINI: That's precisely right, Your Honor.

11 THE COURT: Okay.

12 MR. ORSINI: At which point, all parties have reserved
13 all rights to make whatever arguments they might have otherwise
14 made, absent this settlement, about what the value of the tort
15 claim is.

16 THE COURT: Right. The same with the subro.

17 MR. ORSINI: That's exactly right, Your Honor.

18 THE COURT: The same with the subro settlement, right?

19 MR. ORSINI: That's precisely right, Your Honor.

20 THE COURT: Right.

21 MR. ORSINI: So the fact that we were willing to
22 agree, as part of an overall negotiation, that thirteen and a
23 half billion dollars is an appropriate number to settle the
24 claims, does not dictate that the estimated amount ultimately
25 has to be 13.5 if we're in a litigated context, not a settled

PG&E Corp., Pacific Gas & Electric Co.

1 context.

2 And at the end of the day, what I proposed to Judge
3 Donato that he ultimately agreed to, was that rather than take
4 the estimation hearing completely off calendar, given the
5 possibility that there were scenarios in which we may have to
6 estimate, that he stay the proceedings for a further four days,
7 until the end of this week, because his original stay expired
8 today, I suggested to him, and he ultimately agreed, he would
9 extend that stay until Friday. And that if Your Honor does
10 approve the RSA, either today or sometime before Friday, Mr.
11 Julian and I will work out a proposed stipulated order to take
12 estimation off calendar before Judge Donato. And if this Court
13 does not approve the RSA, then we'll have to go back to Judge
14 Donato and talk about where we go from there.

15 THE COURT: Okay. But let's play that out a little
16 bit more. Suppose I rule this afternoon that the RSA is
17 approved, then -- and leave aside appeals or reconsiderations
18 or anything else -- in terms of an operative event, that means
19 estimation is over, and --

20 MR. ORSINI: Unless and until --

21 THE COURT: No, no, no.

22 MR. ORSINI: Sorry, Your Honor.

23 THE COURT: Over, unless -- I mean, over as long as
24 this thing stays on track and ends up in confirmation.

25 MR. ORSINI: Precisely.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: If it goes off the rails, for whatever
2 reason, or -- including the competing plan, if the competing
3 plan is on the table. Something might happen, and then it will
4 be up to Judge Donato to take over, and do what has to be done.

5 MR. ORSINI: That's exactly right, Your Honor.

6 THE COURT: And also, if I'm right -- and I think we
7 touched on this this morning -- if I approve the TCC RSA, the
8 superior court's role in San Francisco ends.

9 MR. ORSINI: That's --

10 THE COURT: And the issue of what do we do now, in
11 case it goes off the rail is back before Judge Donato.

12 MR. ORSINI: That's precisely right, Your Honor.

13 THE COURT: Okay.

14 MR. ORSINI: Thank you.

15 THE COURT: Okay. Got it.

16 So Mr. Stamer, I didn't hear anything that
17 surprised -- I mean, I got a clarification, but I hope that's
18 what you were looking for.

19 Mr. Qureshi, do you want something I'm not --

20 MR. QURESHI: If I could, Your Honor. Again, for the
21 record, Abid Qureshi, Akin Gump Strauss Hauer & Feld, on behalf
22 of the ad hoc note holders' committee.

23 And Your Honor, I was in the courtroom before Judge
24 Donato. And while Mr. Orsini's, of course, correct in terms of
25 reporting the outcome, which is that the stay was extended --

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1 and I tread very carefully, Your Honor, in terms of reporting
2 to this Court what Judge Donato said. There will be a
3 transcript soon enough. But the thrust of Judge Donato's
4 comment was that the parties -- and I apologize for looking at
5 my phone, but there are press reports that quote him, and I
6 want to make sure I get it right.

7 THE COURT: As long as you're not calling anybody at
8 home.

9 MR. QURESHI: But Your Honor, the thrust of Judge
10 Donato's comment was the debtor's on the one hand, and the TCC
11 on the other have agreed to settle those claims for 13.5
12 billion, and therefore, they've been estimated. He referenced
13 the fact that a key part of the proceedings before him had been
14 to identify other settlements that are relevant precedence for
15 purposes of these estimation proceedings.

16 Then he said, so the parties here have actually agreed
17 to 13.5. So it doesn't matter what happens to the settlement
18 agreement. You've estimated the claim. So basically what he
19 was saying, Your Honor, was whether this Court approves or does
20 not approve the RSA doesn't matter because, if it ends up back
21 in front of him, Judge Donato will say, well, you have
22 agreed --

23 THE COURT: Well --

24 MR. QURESHI: -- to 13.5.

25 THE COURT: -- look, my job is to do what I'm supposed

PG&E Corp., Pacific Gas & Electric Co.

1 to do, and if I am persuaded to approve the RSA today, then I
2 am going to wait until somebody tells me that it's off the
3 rail, to my metaphor, and if that's the case, then someone will
4 have to make the pitch to Judge Donato that either it's a done
5 deal, or it isn't a done deal.

6 MR. QURESHI: Your Honor --

7 THE COURT: Right?

8 MR. QURESHI: I will defer to Mr. Stamer when he gets
9 up to make our argument as to the relevance of those in the
10 context of Your Honor's decision.

11 THE COURT: Okay.

12 MR. QURESHI: Thank you.

13 THE COURT: I'm going to go back to my roll call on
14 the objectors.

15 Mr. Pascuzzi, are you here?

16 MR. PASCUZZI: I am.

17 THE COURT: You are. Thank you for being patient.
18 And did I correctly summarize your position earlier today?

19 MR. PASCUZZI: Your Honor, Paul Pascuzzi. My firm is
20 co-counsel with the California Attorney General's Office for
21 the California State Agencies with fire-related claims.

22 We did file a reservation of rights at docket 5123.

23 THE COURT: Right.

24 MR. PASCUZZI: Your Honor, to -- and that is all we're
25 doing. As far as I've heard, we're not deciding confirmation

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1 issues. We also have issues with the governance of the trust
2 because obviously the government claims are going to be part of
3 this fire victim's trust, and similar to Adventist, you know,
4 we have very large claims.

5 So we did put some statements in our pleadings about
6 being involved in the process of figuring out the governance of
7 the trust. Our particular claims have not been settled, the
8 state agency fire claims. And in fact, the tort committee has
9 told us they do not view the government entities as part of the
10 tort committee's constituents.

11 So I just wanted to make those points and reserve the
12 rights as to the trust governance, the confirmation issues, but
13 we're not opposing the motion.

14 THE COURT: Well, and presumably you will be invited,
15 if you wish to or not, to participate in the discussions about
16 the trust instruments if we get to that point, you know?

17 MR. PASCUZZI: We do wish to, Your Honor.

18 THE COURT: Yeah, okay.

19 MR. PASCUZZI: And we'll have similar issues as
20 Adventist with the voting.

21 THE COURT: The same. The same.

22 MR. PASCUZZI: So we look forward to those to dealing
23 with those issues.

24 THE COURT: Okay. All right.

25 MR. PASCUZZI: Thank you, Your Honor.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Thank you.

2 Mr. Troy, are you here for the federal government?
3 And I believe your position is much the same, but you tell me
4 if that's the case, after you tell me your name.

5 MR. TROY: Yes, Matthew Troy, Department of Justice,
6 Civil Division on behalf of various federal agencies.

7 Yes, Your Honor. I don't have too much to add to what
8 Mr. Pascuzzi said and would echo those comments. We filed the
9 reservation. You've seen it. You've read it. You know what
10 it says.

11 THE COURT: Right.

12 MR. TROY: We also filed a statement with respect to
13 the confirmation hearing, status conference, that was set for
14 today as well, that was filed last week --

15 THE COURT: Yes.

16 MR. TROY: -- that raised more or less similar issues
17 as to what was filed in response to the TCC RSA motion. I
18 would just simply observe that there's -- reservations speak
19 for itself, but there's a lot of heavy lifting to be done in
20 this case, and there's a lot of issues that need to be resolved
21 or ruled upon by Your Honor. And we reserve all rights with
22 respect to those matters that still need to come before Your
23 Honor.

24 THE COURT: Okay. Thanks, Mr. Troy.

25 MR. TROY: Thank you.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: And I believe next on the list is the
2 United States Trustee. Is there an appearance by the U.S.
3 Trustee today? No?

4 MR. ZIPES: Yes, Your Honor. Greg Zipes with the U.S.
5 Trustee's Office, and I appeared before Your Honor at least one
6 time before in this hearing --

7 THE COURT: Yes, you did, Mr. Zipes.

8 MR. ZIPES: -- on the executive compensation hearing.

9 THE COURT: Yes.

10 MR. ZIPES: And I appreciate that you're allowing me
11 to appear by phone.

12 I can be very brief, Your Honor. My office raised
13 three issues, and you've already disposed of one of them which
14 was the notice issues, and that was a concern of our office,
15 that many of the tort claimants who are going to be directly
16 affected by this RSA didn't get actual notice of this, but this
17 Court has ruled on that, and I can just move on.

18 The other two points really deal with the plan
19 process, and I think there have been many statements on the
20 record today already that all the plan-type confirmation issues
21 are being reserved and are not a part of this RSA. So parties
22 objecting on the basis of feasibility or on the basis of
23 absolute priority rule, or something like that, that all will
24 be reserved.

25 THE COURT: Right. And I think you also just raised a

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1 protective position about the releases, and of course you've
2 made the pitch on the releases with the subrogation RSA, and to
3 the extent that they're applicable here, it's the same
4 argument, I believe, right?

5 MR. ZIPES: Sure.

6 THE COURT: Right? Isn't that correct?

7 MR. ZIPES: Correct.

8 THE COURT: Correct. Yeah.

9 MR. ZIPES: Yes.

10 THE COURT: Okay. All right. Thank you, Mr. Zipes.

11 MR. ZIPES: Okay. Thank you.

12 THE COURT: Mr. Karotkin, I kind of took the last
13 three counsel in order, but they were really holding their
14 position. Do you want to say anything on any of them? Because
15 you don't need to if you don't want to.

16 MR. KAROTKIN: No, sir.

17 THE COURT: All right.

18 Mr. Kornberg, are you here for the CPUC? And I think
19 I should've -- CPUC seemed to be in a similar -- maintain the
20 status quo reserve that you speak for.

21 MR. KORNBERG: Alan Kornberg from Paul, Weiss,
22 Rifkind, Wharton & Garrison for the PUC.

23 Your Honor, we filed a reservation of rights. I think
24 it speaks for itself. Unless you have questions for me, I
25 really didn't plan on saying anything today.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: No, I don't. Okay, thanks. No, I am not
2 in --

3 MR. KORNBERG: Thank you.

4 THE COURT: All right. We'll next go to the official
5 creditors' committee. Mr. -- is it Mr. Bray or Mr. Dunn? Mr.
6 Bray, you're up today?

7 MR. BRAY: Me today, Your Honor.

8 THE COURT: Yeah, and you've got a number of issues.

9 MR. BRAY: Yes, good afternoon, Your Honor.

10 Gregory Bray, Milbank, LLP, counsel for the official
11 committee of unsecured creditors.

12 THE COURT: It seems to me that, if I may anticipate
13 it, you're still very concerned about the lockup and what you
14 call the lock of the insolvency out, but --

15 MR. BRAY: The insolvency out, you've dealt with.

16 THE COURT: It's sort of there.

17 MR. BRAY: And I don't disagree --

18 THE COURT: It's kind of in through the back door,
19 right?

20 MR. BRAY: Your comments satisfied our concern there.

21 THE COURT: Okay, okay.

22 MR. BRAY: I am more focused on the same issues that I
23 was focused on with you a couple of weeks ago with respect to
24 the subro RSA. Principally, the -- our urging of the Court to
25 maintain a competitive process and to not approve the anti-

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1 competitive provisions, essentially the -- what I call the
2 "poison pill" provisions in the RSAs.

3 They're virtually identical to the ones that are in
4 the subro RSA, so I --

5 THE COURT: See, let me stop you there.

6 MR. BRAY: Sure.

7 THE COURT: I thought about that a lot in whatever
8 time I had in the last twelve hours. I don't think they are
9 identical, and let me tell you why --

10 MR. BRAY: Okay.

11 THE COURT: -- and then you tell me what's different.
12 By my count -- and Mr. Feldman could give us exacts -- we're
13 talking about 100 or 110 probably financial institutions or
14 banks or insurance companies. That's a lot different -- and
15 all of whom probably have in-house counsel or outside counsel,
16 and all of them are spending a lot of time and a lot of money
17 dealing with these issues.

18 But contrasting that with 70,000 people, many
19 thousands of which don't have counsel, never have had counsel,
20 and we're dealing with something that hopefully, and likely,
21 they have never encountered before in their lives, voting on a
22 Chapter 11 plan.

23 MR. BRAY: Right.

24 THE COURT: So to me, it's much different, at least
25 conceptually, on how we set the table. So tell me why --

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1 MR. BRAY: Well, the RSA doesn't bind --

2 THE COURT: -- they're the same. Huh?

3 MR. BRAY: -- isn't binding the 70,000 or so victims.

4 THE COURT: No, that's right.

5 MR. BRAY: Yeah. Right.

6 THE COURT: That's right. So what is it doing? What
7 does the RSA do -- the lockup? What does it prevent by --

8 MR. BRAY: What it's doing -- it's killing off the
9 competing plan.

10 THE COURT: Well --

11 MR. BRAY: That's the underlying purpose of tying the
12 lockup provision to the settlement. No one disputes. The UCC
13 doesn't dispute, with the exception of the assignment of the
14 vendor claims, which you flagged -- let me just set that aside
15 for a moment, because it's a significant issue, and it does
16 raise its own set of 1054 issues and the possibility of
17 litigation that essentially thwarts a company's ability to
18 proceed with its remediation efforts.

19 But setting that aside for a minute, the competitive
20 process is what's gotten us to this point. Essentially, the --
21 what the company has done, for all intents and purposes, is
22 piggyback onto the settlement that was agreed to between the
23 bondholders and the TCC. And frankly, there's something
24 disingenuous, and that's the word -- I shouldn't say that
25 frankly. It implies not of frankness other times, as you said.

PG&E Corp., Pacific Gas & Electric Co.

1 My point is that it's disingenuous to some extent for the
2 debtor to now to seek to co-op --

3 THE COURT: Well, that's fair. Use that word --

4 MR. BRAY: -- and to take the exclusive benefit --

5 THE COURT: -- you use that word in your papers, and
6 by co-op, that's usually not a complimentary term.

7 MR. BRAY: Well, but they're basically -- what's
8 happened is the debtor has taken someone else's settlement and
9 said I am going to make it mine and not allow anyone else to
10 use it. And the irony is they said the exact opposite with
11 respect to the subrogation settlement -- is I settled that;
12 therefore, it belongs to me and no one else can use it.

13 So we're sort of getting both sides played off the
14 middle here. And again, the purpose, as we see it, is to
15 somewhat stifle, if not stop, a competitive process --

16 THE COURT: But the --

17 MR. BRAY: -- but Your Honor --

18 THE COURT: -- but the victims through their
19 representative have agreed to it. What do I do about that?

20 MR. BRAY: Well, the --

21 THE COURT: The same victims who complained about the
22 last one have now gone to support this one.

23 MR. BRAY: I am not going to speak for the victims.

24 THE COURT: Well --

25 MR. BRAY: Experience suggests --

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1 THE COURT: -- they're --

2 MR. BRAY: I agree with you. Experience suggests that
3 they would be just as happy going forward without being locked
4 up to a plan, as long as the 13.5-million-dollar claim is --
5 that's what they want. And that's what the Court wants to do,
6 and we want you to do it, too.

7 No one objects to the liquidation of both claims
8 today, the 11 billion dollars, and the 13.5 billion dollars,
9 again with the caveat about the assignment of the vendor
10 claims.

11 There's no dispute about that. It's the right thing
12 to do. The debtor has unequivocally stated it's in the best
13 interest of the estate to settle at those numbers.

14 THE COURT: And then your client, I hate to say it,
15 has also not opposed that --

16 MR. BRAY: We don't oppose --

17 THE COURT: Right.

18 MR. BRAY: -- the liquidation of the claims of those
19 numbers.

20 THE COURT: Right.

21 MR. BRAY: We accept that that's a good thing, a good
22 thing for the wildfire victims, a good thing in the best
23 interest of the estates and the creditors.

24 What we don't accept is that the "price to be paid"
25 for the settlement is a lockup that tethers the parties to a

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1 plan that the governor has unequivocally stated in its current
2 form is not compliant with 1054 and, therefore, unconfirmable.
3 To bind the parties to an unconfirmable plan is not in the best
4 interest of the estate or its creditors. It simply isn't. And
5 they may get there. And to maintain the competitive process, I
6 hope they do, because competition works both ways.

7 So as long as -- I would much rather see two potential
8 plans, get to the finish line, and creditors vote, than one. I
9 think it's far better. But approving a lockup that essentially
10 defangs a competing plan in favor of a plan that the governor
11 has unequivocally said doesn't work is -- again, I know I am
12 repeating myself -- is not in the best interest of the estate.

13 THE COURT: Well, the governor's letter closes with a
14 suggestion that there not be a lockup.

15 MR. BRAY: That's right.

16 THE COURT: And as counsel's comments this morning
17 were not inconsistent with that, the question is --

18 MR. BRAY: Agreed.

19 THE COURT: -- what happens if I won't approve the
20 lockup? Does it kill the deal? Again, I don't want to ask
21 anybody else. I am just asking you about it today, and I have
22 to ask myself is the -- look, we've got to go back -- you were
23 here, I think, when I made the first decision about exclusivity
24 and then changed --

25 MR. BRAY: Um-hum.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: -- because of things changed.

2 MR. BRAY: Right.

3 THE COURT: But what was the most important ingredient
4 was the position of the tort committee's counsel and
5 representative. If you're asking me to say I believed you
6 then, but I am not going to believe you or trust you now, so --

7 MR. BRAY: I'm asking you to keep your options open.

8 THE COURT: -- am I taking a gamble by saying I can't
9 approve what you've agreed to, TCC?

10 MR. BRAY: I think the bigger gamble isn't cutting off
11 one of the tracks at not keeping a competitive process open
12 because that's -- again, that's how we've gotten here. Had you
13 not terminated exclusivity, had the bondholders not engaged
14 with the TCC and reached the settlement they've reached, I
15 highly doubt we would be here today --

16 THE COURT: No, I understand.

17 MR. BRAY: -- so we should keep the process going. We
18 don't have the luxury of giving the debtor a chance to go to
19 the end of the line and then say, whoops, I didn't make it.

20 THE COURT: What would happen?

21 MR. BRAY: I was wrong.

22 THE COURT: What would happen if -- I used this bad
23 expression earlier about off the rails. What would happen if
24 there was an insolvency or the OII procedures are such that the
25 plan as now sponsored by the debtors and supported by the TCC

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1 is unconfirmable? Is there some reason to believe that that
2 lockup on all these other terms would carry over?

3 MR. BRAY: No, they wouldn't -- well --

4 THE COURT: They would self-destruct --

5 MR. BRAY: That's my other point, Your Honor.

6 THE COURT: -- wouldn't they but just like the
7 insolvency out has the same concept.

8 MR. BRAY: But that puts us back to square one. The
9 document is drafted -- it's really a provisional settlement.
10 It's a settlement that says --

11 THE COURT: Correct.

12 MR. BRAY: -- as long, Your Honor, as you confirm my
13 plan, the debtor's shareholder plan, then the settlement is
14 applicable and we don't have to estimate.

15 THE COURT: Well, yeah --

16 MR. BRAY: If you decide --

17 THE COURT: Okay.

18 MR. BRAY: -- you don't want to confirm that plan, all
19 bets are off, the settlement is terminated, and the words are
20 of no force and effect and --

21 THE COURT: Well, it's not a question --

22 MR. BRAY: -- estimation --

23 THE COURT: -- of whether I want to. It's a question
24 of whether --

25 MR. BRAY: I agree.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: First of all, if we get to that point,
2 it's where the law compels it, but long before that -- long in
3 terms of days or weeks or months -- something else might happen
4 that --

5 MR. BRAY: Agreed.

6 THE COURT: -- makes the plan not confirmable, in
7 which case, you know, it's of no force and effect, pretty much
8 so, right?

9 MR. BRAY: But the problem with that is the document
10 requires -- and these are more or less the words; I'm
11 paraphrasing it -- the immediate recommencement of estimation.

12 So let's go with your scenario. Let's say we get to
13 the disclosure statement. I think which is set for February or
14 March -- late February, early March.

15 THE COURT: Yeah, I think that's in the --

16 MR. BRAY: Okay.

17 THE COURT: -- it's in the RSA when it's supposed to
18 happen.

19 MR. BRAY: So let's play that out. Let's assume we
20 get there, and the Court concludes I can't approve the
21 disclosure statement for the debtor's plan, because there is
22 something --

23 THE COURT: For whatever reason.

24 MR. BRAY: Whatever reason.

25 THE COURT: Whatever reason.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BRAY: The RSA terminates. We're at the end of
2 February, early March, and we have to restart estimation. As
3 Mr. Orsini said, all bets are off.

4 THE COURT: But what if, at that same time, the senior
5 bondholder's plan is ready to be approved --

6 MR. BRAY: It won't be --

7 THE COURT: -- or the disclosure?

8 MR. BRAY: -- because --

9 THE COURT: Well, why?

10 MR. BRAY: -- because estimation --

11 THE COURT: The lock --

12 MR. BRAY: -- was stayed.

13 THE COURT: Well, no, no, but what I am saying is
14 the -- well, are we talking about the lockup or the --

15 MR. BRAY: Well, they go together, Your Honor. That's
16 my point.

17 THE COURT: No, but this is why I --

18 MR. BRAY: I understand.

19 THE COURT: Well, Mr. Bray, this is why I had trouble
20 with what you wrote because you and others were very emphatic
21 about lockups, and lockups have, you know -- again, they
22 usually mean there are some consequences, but then you said the
23 estimation proceedings which should begin -- well, does that
24 mean I approve the RSA and estimation goes forward all at the
25 same time? That can't be right.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BRAY: Let me explain myself.

2 THE COURT: Yeah.

3 MR. BRAY: Setting aside for a minute, the -- the
4 lockups channel the settlement through the debtor-shareholder
5 plan.

6 THE COURT: Through the debtor -- that's correct.

7 MR. BRAY: That's right. That's the only way that it
8 can really be consummated, and it binds the parties --

9 THE COURT: Well, I am going to stop you again. Does
10 it really, or does it gag the professionals and others from
11 speaking in favor of an alternate plan versus it doesn't --

12 MR. BRAY: It requires them to instruct their clients
13 to vote for --

14 THE COURT: The clients make decisions.

15 MR. BRAY: They do.

16 THE COURT: And the ad hoc senior bondholders can
17 promote their plan as long as 1125 isn't implicated, and if
18 their disclosure is approved, they can do whatever they can. I
19 mean, they're -- the victims here are the critical voting
20 constituents.

21 MR. BRAY: I agree with you.

22 THE COURT: I know that the subrogation group,
23 according to some, should be treated as unimpaired so they
24 don't get a vote. It's hard for me to imagine that I would
25 ever confirm a plan that is voted down by the victims?

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BRAY: I completely understand.

2 THE COURT: Okay.

3 MR. BRAY: So let me try and answer that.

4 THE COURT: So what happens? Why is this lockup so
5 fatal to the senior bondholder's alternative plan if they get
6 to a point where they're the only show in town, obviously?

7 MR. BRAY: Two reasons -- one, your earlier comment to
8 me that the -- most of the wildfire victims are utterly
9 unfamiliar with this process.

10 THE COURT: Correct.

11 MR. BRAY: And they are highly dependent upon, as they
12 should be, upon the advice of their counsel.

13 THE COURT: Correct.

14 MR. BRAY: You know in this RSA what that advice is.
15 As a practical matter --

16 THE COURT: Yes, that's true.

17 MR. BRAY: -- we also know it is highly unlikely that
18 these people are going to discount the advice of their lawyers.
19 That's my first point. So we pretty much know what the answer
20 is.

21 The second point is estimation has been stayed, and
22 the way the lockup works, the bondholder plan is not permitted
23 to take advantage of the settlement. It only channels through
24 the debtor plan.

25 So let's just say your scenario where you want to

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1 confirm the bondholder plan, there are several obstacles if you
2 sign the RSA. First, the settlement under the terms isn't
3 applicable to the bondholder plan.

4 THE COURT: That's right.

5 MR. BRAY: Second, we haven't estimated those claims
6 because estimation was stayed. So you're at confirmation, the
7 disclosure statement, wherever you are in the process, and you
8 want to proceed with the bondholder plan, there's significant
9 structural impediments to doing that.

10 That's why I said, if you approve the RSA, if you want
11 to keep a competing plan process alive -- and I hope you do
12 because we do -- it doesn't -- the RSA doesn't solve the issue
13 in the totality of estimation because the bondholder plan -- it
14 isn't applicable to the bondholder plan.

15 Our ultimate point being as it was with several RSA,
16 if we're going to settle the claims, the settlements should be
17 for all purposes and applicable to any plan proponents.

18 THE COURT: Well, that was the point you made about
19 make it a 9019 and it's a nonissue.

20 MR. BRAY: That's right. That's right. And I'm going
21 to try and go back to the other question you asked me: Well,
22 what happens -- if I don't approve those, will the deal fall
23 away? And the answer is maybe, but given a choice of approving
24 an RSA that really isn't in the best interest of the estates to
25 favor one plan over another, particularly when the plan at

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1 issue is being promoted by the party that has told the Court
2 it's a fiduciary for all parties and told the Court
3 unequivocally the settlement, the dollar settlement, the
4 numbers, are in the best interest of the estate, I think that's
5 highly unlikely. How could a fiduciary do that?

6 THE COURT: Well, okay, but still we'll go back to the
7 point. Am I supposed to play chicken with the TCC and the
8 professionals by saying I can't approve a lockup, so roll the
9 dice and blow the thing up if you want or not? I mean --

10 MR. BRAY: Well, I don't think it's the TCC that's
11 going to blow it up over that. I think it's the debtor.

12 THE COURT: But the TCC agreed to it.

13 MR. BRAY: The TCC agreed to it, but they're asking
14 you to approve it. So ultimately, the question is before you,
15 are those terms in the best interest of the estates and
16 unsecured creditors as a whole? And I know I am being
17 repetitive, but the answer to us is an emphatic no.

18 Even the governor has said to you, albeit not as
19 strongly perhaps as we have, that the governor would like to
20 see competition continue and the governor would like to see the
21 lockups removed.

22 Every party other than the settling parties is, for
23 lack of a better term, expressing severe reservations about the
24 structure of the RSA. And even on an unrelated matter, you've
25 heard how many government agencies stand up and make a

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1 reservation of rights?

2 THE COURT: Yeah.

3 MR. BRAY: There's a lot of wood to chop.

4 THE COURT: But I've also have enough confidence in
5 the professionals and the mediator and everybody else to come
6 to a good solution to those things that aren't on the table
7 today.

8 In other words, it is a very huge task to do that
9 trust correctly and the procedures correctly and the management
10 of it, but that's why we have the best and the brightest doing
11 it on this case. And so what's wrong with that?

12 MR. BRAY: And we think the best way to motivate the
13 best and the brightest has been the way you have done it so
14 far: through a competitive plan process. That keeps everybody
15 honest on both sides of the plan process.

16 And our ultimate point to you is to urge you to
17 maintain that process because we don't know what's going to
18 happen. What we do know is it changes every day. And I mean,
19 the last four days, you know --

20 THE COURT: It has --

21 MR. BRAY: -- have been a whirlwind.

22 THE COURT: I haven't checked --

23 MR. BRAY: So I don't know when I am going to wake up.

24 THE COURT: -- my phone lately.

25 MR. BRAY: Yeah. Every time I look, now I see Judge

PG&E Corp., Pacific Gas & Electric Co.

1 Donato has said -- I mean, every day is different. So if
2 there's anything to take away from this, is that options --
3 keeping our options open is a good thing, not a bad thing, and
4 that settling these claims is a good thing. Liquidating them
5 at the agreed-upon numbers is a good thing. But it's not
6 necessarily a good thing -- we're taking a risk -- if we lock
7 up those settlements and channel them through one particular
8 plan and we get down the road and we find out that that plan,
9 for whatever reason, doesn't satisfy the governor's concerns,
10 the CPUC's concerns, it doesn't satisfy Your Honor's standards
11 under 1129.

12 THE COURT: So once again, I am going to restate it
13 because you've apologized for repeating yourself. I am
14 repeating myself. If I disapprove it as is --

15 MR. BRAY: Um-hum.

16 THE COURT: -- and tell you I will approve it only if
17 the lockup is out --

18 MR. BRAY: Um-hum.

19 THE COURT: -- and I'm focusing on this plan -- no, I
20 mean, excuse me, this RSA, not --

21 MR. BRAY: I understand.

22 THE COURT: -- the subro because to me it's --

23 MR. BRAY: They're different.

24 THE COURT: -- they're much different. In my mind,
25 they're much different. So if I disapprove it, unless the

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1 lockup is removed, obviously the debtor and the TCC can solve
2 that problem in two seconds by taking it out --

3 MR. BRAY: They could.

4 THE COURT: -- and so that takes that out of the way,
5 but the question is, then, if they don't, then we're back to
6 well -- I don't know, not square one but --

7 MR. BRAY: No, we -- estimation, depending upon what
8 Judge Donato said -- and I don't want to put words in any of
9 the judge's mouths by any stretch. I don't know what happened
10 there. It sounds like Judge Donato was pretty emphatic about
11 where estimation is going to land. What would happen is the
12 process would continue. Estimation would go forward. People
13 would prepare, just like they wanted to do, and we'll continue
14 with the competing plan process. There will be potentially
15 other settlement opportunities --

16 THE COURT: And --

17 MR. BRAY: -- but it's not the end of the world.

18 THE COURT: Okay. And what in your mind would happen
19 if I approve it, what happened -- what is the -- and Mr. Stamer
20 and his colleague can tell me more specific, but what do you
21 think, as a neutral party here, what their options are at that
22 point?

23 MR. BRAY: If you approve the RSA?

24 THE COURT: They obviously control their ten, and go
25 home, but if they press their plan --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BRAY: I don't -- I think --

2 THE COURT: They can still without any prohibition,
3 and leaving aside 1125 --

4 MR. BRAY: Um-hum.

5 THE COURT: -- and when (indiscernible), they can
6 still make the pitch that their plan is better for a lot of --

7 MR. BRAY: But what's the number --

8 THE COURT: Well --

9 MR. BRAY: But what number do they put in their plan
10 for treatment?

11 THE COURT: It's the same.

12 MR. BRAY: How can they do that?

13 THE COURT: It's in their plan. It's in their plan
14 now.

15 MR. BRAY: But it hasn't been estimated.

16 THE COURT: I understand it hasn't been estimated.
17 But it's the same number that's been floating around since they
18 first put it out there, and the only thing that's changed since
19 the bondholders put that 13.5 on the table is the debtor's side
20 came up to 13.5.

21 So those numbers are sort of not in concrete, but
22 they're there --

23 MR. BRAY: Let --

24 THE COURT: -- on the table.

25 MR. BRAY: If you're going to allow, as a practical

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1 matter, the bondholders to effectively solicit on the same or
2 perhaps even better plan treatment, I guess I would need to
3 think about that, and I will let them address it. I suspect
4 the debtors will not agree that that's permissible.

5 THE COURT: Well, I want to hear that.

6 MR. BRAY: Yeah.

7 THE COURT: So let's reserve that. I am going to
8 depart from my procedural steps by -- and a little while ago, I
9 told Mr. Karotkin and Mr. Orsini I --

10 MR. BRAY: And let me just make one more comment on
11 that. I just thought about it. If that's what you're going to
12 do, as a practical matter, let them use the settlement, then
13 why have the lockup at all?

14 THE COURT: Well, that's obviously, I'm thinking about
15 that because, again, my job is to make decisions on disputes.
16 It isn't to play chicken with people, but I could sit here and
17 think oh, well, they'll back down. I'll just take this out.
18 That's not the role that I'm supposed to play.

19 MR. BRAY: Agreed.

20 THE COURT: But what I am trying to do is to think
21 about well, what happens if -- what other ramifications? Does
22 the sky fall or not? And I want Mr. Stamer and counsel for the
23 BOKF to address those issues because they have both raised
24 their concerns about those, and what I was about to say is I
25 previously told Mr. Karotkin -- I'd kind of go and forth on

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1 these issues, but to me, what you're saying, and what the
2 bondholders and the BOKF have put together are rally variations
3 on the same argument. So I am going to let each of their
4 counsel speak, and then I will let Mr. Karotkin and Mr. Stamer,
5 whoever wants to speak, to all the issues, so -- because, I
6 mean, really the question about lockup is really, really the
7 big question right now in my mind, so -- and that's certainly
8 the point on your mind.

9 MR. BRAY: It is, Your Honor, and just one final
10 comment back to the assignment of the vendor claims.

11 THE COURT: Yeah, right.

12 MR. BRAY: I don't have an answer for you about this
13 today, or a proposed solution, other than it's a significant
14 problem, and we think it may actually going to the ability by
15 1054 --

16 THE COURT: Well, and that's right, and if the debtor
17 and TCC worked a deal that chancers away the debtor's ability
18 to comply with 1054, then do you know what? Be careful what
19 you wish for. But that's not a today issue, I don't think.

20 MR. BRAY: It's really more of a plan, 1054 issue.

21 THE COURT: Yeah, right.

22 MR. BRAY: I just want to make sure it doesn't get
23 lost in the shuffle.

24 THE COURT: It's not lost in the shuffle.

25 MR. BRAY: Thank you, Your Honor.

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1 THE COURT: So Mr. Karotkin, I will come back to you
2 but I want to let Mr. --

3 MR. KAROTKIN: Your Honor, I do want to respond to the
4 assignment argument.

5 THE COURT: Yeah, but let's hold that because this
6 lockup -- you're going -- you or Ms. Dumas are going to have to
7 address the lockup, particularly because of the change --

8 MR. KAROTKIN: Sure.

9 THE COURT: -- of position from the other plan to
10 yours.

11 So Mr. Stamer, again I know who you are, but please
12 state your name for the record.

13 MR. STAMER: But I am happy to give it for the record.
14 Mike Stamer from Akin Gump on behalf of the ad hoc senior
15 noteholder committee.

16 Your Honor, as you know, the senior noteholder
17 committee holds approximately thirteen billion dollars of debt
18 of the company, and we just so happen to be a co-proponent for
19 now of a competing plan of reorganization.

20 THE COURT: You might be an only proponent in a few
21 minutes but --

22 MR. STAMER: And Your Honor, that's actually a great
23 place to start. So I want to make two points: One is that we
24 support a thirteen-and-a-half-billion-dollar settlement for the
25 TCC, unequivocally. We got there first.

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1 What I think is lost --

2 THE COURT: You might have even set the mark,
3 therefore, then the match, right, just by coincidence.

4 MR. STAMER: And that's okay. The subtlety which is
5 not actually brought up by the debtors is, and I realize this
6 is a little self-serving, but our plan is better, from their
7 perspective.

8 So if you were to put a truth serum in their financial
9 advisor, they would tell you that the treatment for the tort
10 claimants under our plan is worth more than a billion dollars
11 more than the debtor's.

12 And I'll go through why our plan is --

13 THE COURT: What would they say about if you get that
14 adverse ruling on the post-petition interest?

15 MR. STAMER: I don't think it would impact --

16 THE COURT: Well, it would reduce the billion by half.

17 MR. STAMER: It would actually -- if less money went
18 out the door to pay post-petition interest, there would be more
19 money that came into the estate. They're -- under our plan --

20 THE COURT: Okay.

21 MR. STAMER: -- they're getting thirteen-and-a-half,
22 and they're getting half equity, and half cash -- half cash on
23 the barrel head --

24 THE COURT: Right.

25 MR. STAMER: And the equity is issued by, very simply,

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1 issued by a company that has less debt.

2 THE COURT: That's --

3 MR. STAMER: Seven billion dollars less debt. So it's
4 more valuable. So Your Honor, this is -- like everyone in the
5 courtroom -- and Judge Donato picked up on this. Now I think
6 Judge Donato is in agreement. Everybody in the courtroom
7 believes that the tort claims should settle for thirteen-and-a-
8 half billion dollars.

9 What the lockup does is Mr. Karotkin got up and said
10 we're done. It's all over. We've settled with all the
11 impaired creditors. You can do away with the other plan. We
12 actually believe that's inaccurate and somewhat reckless.

13 So from our perspective -- and this is -- it's clear
14 from what Mr. Karotkin says. They want to end competition. He
15 said it from the podium. They want to end competition, and the
16 way they want to do that, it started with the public entities,
17 the billion-dollar settlement that didn't come across your
18 bench.

19 THE COURT: Right.

20 MR. STAMER: Then it went to the subros, and now it's
21 with the torts. With the torts, it's even worse because not
22 only are they -- did they demand as part of these negotiations
23 that they agreed to support their plan, only plan, and no one
24 else's plan, they are requiring the torts to pull out of our
25 plan.

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1 THE COURT: Right.

2 MR. STAMER: And what's coming next is them to argue,
3 Your Honor, you terminated -- actually, they already argued it.
4 You terminated exclusivity so that those two can file a plan,
5 and now that we have required the torts to pull from the
6 bondholder plan, exclusivity is back in place. They want to
7 destroy competition, which from our perspective is bad on every
8 single level.

9 So Your Honor, if we can -- there's a few things we
10 can talk about. We are obviously supportive of the settlement.
11 We are supportive of taking out any of the lockups, both with
12 respect to the subro plan and with respect to the TCC plan, but
13 Your Honor asked a very important question -- it's the ultimate
14 question -- which is, if you were to do as everybody other than
15 maybe the TCC, although they may want to do this in their heart
16 of hearts, if you were to play chicken, if you were to say, I
17 will approve the settlement, it's a fair settlement, but it's
18 not a fair settlement without removing the lockup, what would
19 happen?

20 We can look at the transcript, but I think Mr. Feldman
21 alluded at the last hearing, counsel for the subros, that
22 that's really the debtor's issue. That's not something they
23 would insist upon. So our assumption is they're not blowing up
24 this deal if, in fact, there's competition for purposes of
25 their treatment.

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1 And with respect to the TCC, Your Honor, the TCC, they
2 left us, or in the process of trying to leave us, and walk away
3 from in excess of a billion dollars of value. They did it
4 because they want certainty. They want to make sure that
5 estimation is over. They can stop spending money, spending
6 time, and risking what's happened with estimation.

7 Your Honor, you should read the transcript. Again, I
8 wasn't there but I read the news articles. If you take the
9 lockout up, and equity forces the debtor to go back to
10 estimation, estimation will be over, I would say, within hours.
11 Because Judge Donato heard that everybody in the case wants to
12 settle this for thirteen-and-a-half billion dollars, and
13 settlements are actually relevant to an estimation, he is going
14 to end up at thirteen-and-a-half billion dollars.

15 THE COURT: Well again, I am not going to speculate on
16 what his thought process would be or whether he needs more or
17 less information. I am the one that has to make the call on
18 this issue, and you know, that's -- and I am not going to go
19 reading what someone said to Judge Donato an hour ago because
20 that's not the point.

21 But my point -- let's go --

22 MR. STAMER: Your Honor, let me add a little context.
23 I think it will be helpful, and I will try not to take up too
24 much time, and I am not going to speak --

25 THE COURT: Take as much time as you want.

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1 MR. STAMER: -- for the governor's office, but I
2 understand the governor is going to get back up when I am done,
3 or the governor's counsel.

4 THE COURT: Well, I did invite him but he has --

5 MR. STAMER: So the governor's here yet, as far as I
6 know.

7 THE COURT: As near as I can tell, I haven't seen him
8 come in the last couple of hours.

9 MR. STAMER: Elvis is not in the room.

10 Your Honor, the debtors -- there's a bunch of
11 undisputed facts. The debtors need billions of dollars to
12 emerge. They need to raise a tremendous amount of capital. In
13 order for them to raise the billions of dollars, tens of
14 billions of dollars, they need to qualify for the fire fund.

15 THE COURT: Yeah, of course, I know.

16 MR. STAMER: If in fact -- in order for them to
17 qualify for the fire fund, they need to satisfy the obligations
18 of AB 1054. I don't think anyone disagrees. If they can't
19 satisfy the obligations under AB -- if they're not AB 1054
20 compliant, the plan is not feasible. And Your Honor --

21 THE COURT: Well, that's the same is true with your
22 side.

23 MR. STAMER: It is, and we -- you're right.

24 THE COURT: Okay.

25 MR. STAMER: And we have had conversations with the

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1 governor's office. We actually think our plan is more
2 attractive, not only to the torts, but to everyone, and I'll
3 touch on it briefly.

4 THE COURT: No, but you can touch on it, but you've
5 made it abundantly clear. That's what you believe, and I am --
6 you're making the pitch. I understand.

7 MR. STAMER: Fair enough, Your Honor.

8 THE COURT: Presumably if there is no lockup, you'll
9 make the pitch to the voters, or their counsel, but it's the
10 same. I mean, what else happened? In other words, let's try
11 it a different way.

12 MR. STAMER: Sure. Sure.

13 THE COURT: Walk me through what happens with your
14 plan if I approve this TCC. What's the lockup -- or I don't
15 approve it -- I don't approve the lockup, but it goes forward
16 anyway. Walk me through how those play out.

17 MR. STAMER: If you approve it without the lockup --

18 THE COURT: Yeah.

19 MR. STAMER: -- which means the TCC has the --

20 THE COURT: They're not prohibited from talking about
21 it.

22 MR. STAMER: From being a co-proponent of our plan?

23 THE COURT: Well, I don't know about being co-
24 proponent, but they're not prohibited from speaking out against
25 it or urging people to vote one plan versus the other.

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1 MR. STAMER: Objectively. And again, I -- my hope is
2 that the TCC will confirm this if they stand up. Objectively,
3 if you take out the lockup, they will vote for -- I think
4 they'll vote for both plans, but if they were only allowed to
5 vote for one plan, it would -- they would -- logic would
6 dictate that they would vote for our plan. Our plan
7 provides --

8 THE COURT: But wait a minute.

9 MR. STAMER: Sure.

10 THE COURT: You say if they're only allowed to vote
11 for one plan. Nobody is prohibiting you from voting. The
12 question is whether they're under the TCC debtor's lockup --

13 MR. STAMER: Right.

14 THE COURT: -- the people who tell the -- educate the
15 people who are unfamiliar with these procedures what it all
16 means, but the bottom line, what it all means is you get your
17 share of 13.5 million either way, right? And one way you have
18 the existing management, and the other way you have perhaps a
19 change of, not only management, but shareholder control, or a
20 major piece of shareholders.

21 MR. STAMER: There's a number of variables, Judge.

22 THE COURT: Right.

23 MR. STAMER: And one variable is whether either plan
24 can satisfy AB 1114 --

25 THE COURT: 1054.

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1 MR. STAMER: 1054, thank you. Thank you.

2 THE COURT: Hey, I memorized it.

3 MR. STAMER: Your Honor, it's -- I assume what they
4 would do, if you took out the provision that prohibited them
5 from voting for supporting any plan of reorganization, they
6 vote in favor of our plan. Maybe they hedge both bets.

7 THE COURT: Maybe they vote for both plans.

8 MR. STAMER: And maybe they -- that would be okay.
9 The issue is whether or not the debtors are ever going to be
10 able to satisfy AB 1054, but locking the TCC and the subros and
11 the PEs to just this plan -- in the face of the governor's
12 letter, December 13th. You've heard Mr. Karotkin talk about
13 well, we're meeting and we're making progress, Your Honor
14 that's too big a risk. If you shut down competition here, Mr.
15 Karotkin said, like he says at every hearing, ignore them.
16 They're going to get paid in full.

17 Okay. We have issue with respect to what paid in full
18 means, but setting that aside, if he is wrong, if he can't get
19 there with the governor, then this case is going to turn upside
20 down and the creditors are going to be impaired.

21 THE COURT: Well, I understand.

22 MR. STAMER: Including the torts.

23 THE COURT: I understand. But look, at the moment,
24 under the debtor's plan, your clients are unimpaired. You have
25 complained about the treatment of post-petition interest, but

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1 that's a discrete legal question, same with the make hold
2 provisions.

3 MR. STAMER: Correct.

4 THE COURT: And even if you got all of that, that's
5 not the point. You're allowed to speak. The First Amendment
6 says what you can say. You and your clients can pitch your
7 plan anytime you want. The question is whether critical folks
8 like the lawyers, and the personal injury lawyers particularly,
9 and your fighting against the gag order that the debtor would
10 have me place on them, vis-a-vis your plan, right? Isn't that
11 what it comes down to?

12 MR. STAMER: Yes, it's a little -- yes, but it's a
13 little more subtle than that.

14 THE COURT: It's a little more subtle.

15 MR. STAMER: Maybe it's subtle like a sledgehammer.
16 So if you were to say, I disregard everything that people on
17 this side of the table are saying, and I am approving the RSA,
18 I am approving the subro RSA, and I'm leaving in all the
19 lockup, what the debtors -- what they said from the -- what Mr.
20 Karotkin said from the podium is our plan disappears.
21 Competition is over.

22 THE COURT: But you don't believe that, do you? Do
23 you?

24 MR. STAMER: I would ask the Court in the, hopefully,
25 unlikely event that you're going to approve any of the lockup

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1 that you clarify your exclusivity hearings, such that -- or
2 exclusivity decision, that our plan is still alive and well.
3 Exclusivity is terminated as to us. Notwithstanding, we may
4 have lost our partner. At the --

5 THE COURT: Well, I mean, is there any doubt about
6 that? I mean, has anyone said to the contrary? Have --

7 MR. STAMER: Actually, yes.

8 THE COURT: Who? Well, I haven't seen it in any
9 papers. I mean, let me try it a different way. If I were to
10 agree with the debtor/TCC approach, I have no knowledge of how
11 that would take away your client's entitlement to push its plan
12 to -- and you're the one that wanted to be ready for disclosure
13 statement earlier. And I said, no, you're going to have to
14 wait. And to me, the only immediate impact if this lockup
15 occurs, is that it limits the ability to promote your plan by
16 certain players. TCC members and counsel and tort claimants.
17 No one else.

18 MR. STAMER: Two things, subros --

19 THE COURT: I mean, the debtors can't pay.

20 MR. STAMER: -- they have to vote against our plan.
21 And anybody that's a signatory to the RSA needs to vote against
22 the plan. And as Mr. Bray said, I think very accurately, that
23 the 70,000 claimants here who are the principal focus of this
24 chapter 11, this is hopefully their first time and their last
25 time doing this.

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1 THE COURT: Correct.

2 MR. STAMER: And when -- every once in a while, I get
3 ballots because I have a claimant in a bankruptcy case or a
4 class-action -- I have a hard time figuring it out.

5 THE COURT: You're going to find out you're going to
6 get \$5.95 and a coupon for blue jeans.

7 MR. STAMER: And -- right, and most of it goes to the
8 lawyers.

9 THE COURT: Okay.

10 MR. STAMER: That's exactly right.

11 THE COURT: Yeah. But for what?

12 MR. STAMER: But Your Honor --

13 THE COURT: It's not our point.

14 MR. STAMER: Your Honor, fundamentally, we have an
15 opportunity here. We have -- we have an opportunity to make
16 this a fully consensual case, and we have an opportunity to
17 make this a competitive process. Competition -- we said from
18 the very beginning, competition is good, competition is good,
19 and time is very short.

20 THE COURT: I know.

21 MR. STAMER: If Your Honor allows any restrictions,
22 I'll go back to the fiduciary issues again, Your Honor, and
23 I'll tread a little bit lightly, but I have a very difficult
24 time. So the fiduciary thing to do here from the perspective
25 of the company is to have the settlements be applicable to both

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1 plans. Allow -- we call it portability. The --

2 THE COURT: Well, what you're really saying is just
3 treat them like standalone 9019 motion and just approve it. Be
4 done.

5 MR. STAMER: That's exactly right.

6 THE COURT: Yeah.

7 MR. STAMER: And everyone, other than the equity
8 here -- and again, equity appointed to the majority of the
9 board that the governor has said based upon their performance
10 is going to have to be gone by the time this case is over.
11 Your Honor, what they should be doing is driving to a
12 consensual value maximizing process, which is not what they're
13 doing. The debtors have not engaged with us in terms of any
14 negotiations since the beginning of these cases, and I had to
15 stand up and do the song and dance just to get basic financial
16 information, which, ultimately, we got some, but there's still
17 more to go.

18 THE COURT: Let me switch topics.

19 MR. STAMER: Sure.

20 THE COURT: Why -- you made your point for the fire
21 victims. Why is it a big deal one way or the other on the
22 lockup on the subros? Again, you heard me say to Mr. Bray,
23 we're talking about 100 and something financial or institutions
24 or banks or people with good counsel and experience. What can
25 they do to hurt you if there's a lockup as to that class?

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1 MR. STAMER: Your Honor, they could vote against our
2 plan --

3 THE COURT: Yeah.

4 MR. STAMER: -- which would require us to confirm over
5 their objection ---

6 THE COURT: But do you really think the --

7 MR. STAMER: -- or they could -- if, for example, the
8 RSA gets approved, and for whatever reason, either the debtors
9 plan falls away or even it lags behind, they would have the
10 ability to terminate and push this back into estimation.

11 THE COURT: But that's not an issue -- a lockup issue.
12 That's just a contractual issue. In other words, under the
13 subro RSA, there's a right to terminate based upon insolvency.
14 That's the critical issue. We're all starting over again if we
15 get -- if insolvency is a certainty, right?

16 MR. STAMER: It --

17 THE COURT: I mean, how can it possibly be otherwise?

18 MR. STAMER: Your Honor, I think that's right. It
19 depends upon the level of insolvency, what caused it in the --

20 THE COURT: But wait a minute. You're either
21 insolvent or you're not. One dollar and you're out of the
22 money.

23 MR. STAMER: They're -- right. They -- the --

24 THE COURT: And you get -- all your post-petition
25 interest is gone bye-bye.

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1 MR. STAMER: The lynchpin of the subro settlement,
2 among other things, is they don't want to have their recovery
3 diluted by the torts reaching into their pocket using the Made
4 Whole Doctrine. We -- this has been briefed --

5 THE COURT: I understand. I understand.

6 MR. STAMER: -- and the issue is as to whether it's an
7 involuntary release or a voluntary release. Under our plan,
8 and maybe it has changed, but because it was giving the tort so
9 much more value, at least that compared to the other one, the
10 debtors earlier plan, the torts are willing to give blanket
11 releases based upon a 13.5 billion dollar bucket available for
12 the tort claims. So again, they are now -- the torts are now
13 subject to a restrictive RSA, which prevents us from talking to
14 our plan partners about how to move the process over.

15 THE COURT: I'm not following you on that. If the
16 plan is capped at 13.5 billion, it is what it is, right? And
17 so even for your plan, the voters need to vote in favor of it,
18 but it doesn't guarantee that they're, in fact, going to be
19 paid in full. It's an estimation and a prediction that they
20 will. And a prediction that AB 1054 has been satisfied, right?
21 But it's no guarantee.

22 MR. STAMER: No, no. I believe the 13.5 billion
23 dollar settlement, at least under our plan, notwithstanding
24 that the torts have asserted, now thirty-six billion dollars of
25 claims, that they believe -- they have stipulated that putting

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1 13.5 billion dollars into a resolution trust -- half stock,
2 half cash -- would satisfy the requirement of paying tort
3 claimants in full. And I think you heard Mr. Feldman say if,
4 in fact, someone was willing to pay him eleven billion
5 dollars -- his clients, although he'd take it, I'm sure --
6 eleven billion dollars in cash, that's something they would
7 accept.

8 Again, Your Honor, based upon the restrictive nature
9 of lockups -- again, now we're going back to the subros, and I
10 don't mean to reargue subro, we have been unable to have any
11 discussions with them. We know because their biggest -- the
12 largest subro claimholder, which is Baupost, is also, I
13 believe, the largest anchor tenant in the twelve-billion-dollar
14 equity investment. That is the lynchpin of the company's plan.
15 So there are people in the subros that want stock. We haven't
16 had an opportunity --

17 MR. TSEKERIDES: Is Mr. Stamer testifying now? Is
18 there an affidavit or a declaration in evidence to support
19 anything he's saying?

20 THE COURT: No. He's -- he's making --

21 MR. STAMER: Your Honor, there's a -- there's a --

22 THE COURT: -- he's making an argument.

23 MR. STAMER: Right. And all of this stuff is --

24 THE COURT: I'm not making any findings.

25 MR. STAMER: All of this is publicly available. It's

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1 the 2019. It's also the backstop commitments.

2 So again, back to the fiduciary duty, Your Honor.
3 Consistent with the board's fiduciary duty, what they should be
4 doing is they should be settling these cases and having the
5 cases be available to a competitive plan process. And what
6 they're doing is they're threatening everybody in the case that
7 if they don't get what they want, then they're going to force
8 this back to estimation. And if they -- again, Your Honor,
9 we'll ultimately read the transcript. I wasn't there. There's
10 news articles everywhere. I think it's very clear what happens
11 if, in fact, this goes back to to estimation in front of Judge
12 Donato. We are supportive of the underlying settlement with
13 the Court.

14 THE COURT: And you know I wasn't there. I don't
15 necessarily know if I'll read the transcript, but it's hard for
16 me to imagine in a hearing that only took minutes that anything
17 he made would be -- any decision he announced would be the
18 equivalent of a factual finding that is binding. I mean, I
19 would be more inclined to think that somebody said, they got
20 this hearing going down on 16 and the judge is deciding whether
21 to approve a deal that locks in this 13.5 billion. And we need
22 to have a further stay, and Judge Montali will be done with it
23 shortly. And he probably said, good, let's wait and see what
24 he does. Period. That's probably what happened.

25 MR. STAMER: Again, Your Honor, I wasn't there. I

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1 haven't been --

2 THE COURT: I wasn't either.

3 MR. STAMER: I haven't been to any of his hearings,
4 but my understanding is Judge Donato is very much to the point.

5 THE COURT: Well, of course.

6 MR. STAMER: Judge Donato is concise, and when he has
7 something on his mind, he communicates it. And ultimately --
8 look, we'll provide -- we'll file it on the docket because I
9 think it's worth the Court seeing exactly what Judge Donato
10 said. The only reason we raise it, Judge, is because this game
11 of chicken they're playing, there's a least a little bit of a
12 safety net in front of Judge Donato, that, ultimately, we think
13 that he's going to end up at 13.5, whether you approve this RSA
14 or not.

15 THE COURT: Yeah, but look -- okay. Let's move on.
16 I'm not going to make a decision today based on what Judge
17 Donato, in a fifteen-minute hearing, announced. Because, first
18 of all, I don't think it was -- it was nothing more than a
19 status conference. If TCC and the debtor's counsel want to
20 say, yes, there's a stipulation; we got a value, that's one
21 thing. But I doubt that that happened. So my job is to decide
22 whether today to approve this RSA that has a -- pegs that 13.5
23 million for the TCC with or without a lockup. Let me --

24 MR. STAMER: Your Honor, I just -- finish with one
25 question.

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1 THE COURT: Yes.

2 MR. STAMER: And I'll rely on my papers with respect
3 to why our plan, as filed, is better than the debtor's plan.
4 In addition to the additional value to the TCC.

5 THE COURT: But that's not a question that I'm asked
6 today.

7 MR. STAMER: No. I only say it because -- again, this
8 is about the torts, and this is about getting them as much
9 value as possible as quickly as possible.

10 THE COURT: Yes, it is.

11 MR. STAMER: And they're settling for less value
12 because they want certainty. I only end with a question. And
13 the question is: Why -- ignoring the influence that equity has
14 had on these cases, what would be the harm to the debtors?
15 What would be the harm to the debtors if the RSA were approved
16 without -- and the subro RSA were approved without any of the
17 lockup provisions? There may be damage to equity, and that's
18 because equity has been using estimation as a cudgel, as a
19 stick. And that's how they got, at least for the time being,
20 the torts to migrate towards certainty. There is no answer to
21 that question. There is no damage.

22 THE COURT: But I asked the question --

23 MR. STAMER: Sure.

24 THE COURT: -- a few weeks ago. And one my musings is
25 are we going to have to deal with it anyway if there's a

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1 cramdown and equity argues that you're getting overpaid if it's
2 your plan. How do we -- it's the same question, isn't it?

3 MR. STAMER: It's a great point. So --

4 THE COURT: Well, it's the same question, isn't it?

5 MR. STAMER: It's a great point. And the point is if
6 you were to say, I am approving the settlements, but I am not
7 approving the lockups. And for whatever reason, equity goes
8 off the rails. They decide to be very litigious. They are
9 protected by 1129(b). And therefore, if there is overpayment
10 of anyone, you don't need to deal with Judge Donato -- although
11 I think we know the punchline there -- they are protected by
12 1129(b) and they will have time. They will have -- we've all
13 done this litigation a bunch of times. They will have the
14 ability to try to establish that the torts are being overpaid;
15 that somehow, other creditors are being overpaid --

16 THE COURT: But it still takes -- you still have to
17 value the claims that are being paid in some fashion, right?
18 In other words, if we --

19 MR. STAMER: Not if you settle them 13.5. Not if you
20 approve -- if you say I agree to the RSA; I take out the
21 lockup --

22 THE COURT: Does that -- you --

23 MR. STAMER: Let me take it one step further. So if,
24 in fact, you were to find that the settlements -- the RSAs are
25 in the best interest of the estate; they are reasonable, but

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1 they're not if they have the lockup provisions, right? Our
2 anticipation is the company, consistent with its fiduciary
3 duty, would say, okay, we, the company, will sign on to the
4 modified RSA. To not do that, to step away from these
5 negotiations, to revert back to Judge Donato to try to litigate
6 these issues, would be the cherry on top of a litany of
7 breeches of their fiduciary duty.

8 THE COURT: But you haven't answered my question. If
9 I --

10 MR. STAMER: I'm glad I entertain.

11 THE COURT: If you here at confirmation and you are
12 promoting and asking me to confirm your client's plan, what do
13 you when Mr. Bennett or someone on the shareholder's side says
14 you're overpaid, you're violating absolute priority rule, we
15 need evaluations? What are you going to do? Say well, Judge
16 Donato already made the findings? Is that what you're going to
17 argue? Is that what you believe has locked them in, and
18 therefore, there's nothing to talk about?

19 MR. STAMER: Again, regardless if it's Donato --
20 whether it's Judge Donato, whether it's this Court -- if you
21 approve the settlement as a reasonable prospect, as above the
22 lowest point in the range of reasonables --

23 THE COURT: Range of reasonables.

24 MR. STAMER: Yeah.

25 THE COURT: But is that a finding that is binding on

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1 the equity for cramdown purposes?

2 MR. STAMER: Is it a --

3 THE COURT: Well, is it binding? I mean, does it --
4 is it law -- is it something -- pick a legal term. Does it
5 lock in the equity and prove as a matter of law that the
6 proponent isn't underpaying equity or overpaying somebody. I
7 mean, what's the consequence, vis a vis the equity? The equity
8 is an impaired class under the plan, right?

9 MR. STAMER: Yeah.

10 THE COURT: And they're entitled to protection. So
11 don't you have to do evaluation?

12 MR. STAMER: Your Honor, the answer is no. I don't
13 think you have to do evaluation. And fundamentally, Judge,
14 equity has supported this settlement. Equity is a co-proponent
15 of a plan that is proposing to settle these claims for 13.5.

16 THE COURT: Okay.

17 MR. STAMER: And for them to back away and say, 13.5
18 is outrageous; you're overpaying them. It would be both
19 disingenuous and inconsistent with everything they've said up
20 to this point with respect to being a co-proponent of the plan.

21 THE COURT: Okay. I understand your point. Let me go
22 to BOKF and then I'll see what -- and then we'll probably take
23 a short break and let the debtors and the -- well, and the TCC.
24 I need to hear from them.

25 MR. STAMER: Thank you for the time, Your Honor.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Thank you, Mr. Stamer.

2 This is the bank? You're here to speak for the bank,
3 Counsel?

4 MS. BROWNSTEIN: Good afternoon, Beth Brownstein from
5 Arent Fox on behalf of BOKF as indenture trustee for the senior
6 notes and the outstanding principal amount of 17.5 billion
7 dollars.

8 THE COURT: Thank you, Ms. Brownstein.

9 MS. BROWNSTEIN: I'm not going to repeat what the
10 other arguments were. I'm going to state the obvious, which is
11 competition has been good. It is why we are here. And there
12 is no reason why we should end competition now.

13 I think we also all know, based on the hearing today,
14 that there are significant uncertainties, execution risks, and
15 legal hurdles with the debtor equity plan. I don't think
16 anyone disputes that. I think the governor's letter
17 articulated in detail the kinds of issues with the amended
18 plan. Whether it's corporate governance, the liquidity issues,
19 the ability of the proposed reorganized debtor to access the
20 capital it needs to meet AB 1054. Those are all issues we all
21 know exist.

22 So one of the concerns we have with the very broad
23 nature of the lockup is this idea that no signatory party can
24 participate in the formulation of any other plan, other than
25 the amended plan. But we know that the amended plan is not the

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1 plan because it's not confirmable. So it is hard to understand
2 how anyone benefits from that kind of broad lockup --

3 THE COURT: Well, isn't that taking it a little bit
4 too literally? In other words --

5 MS. BROWNSTEIN: I don't have a --

6 THE COURT: -- wouldn't that be kind of an anomaly if
7 I say I'm going to approve this, but by the way, the plan is
8 unconfirmable, but you can't do anything to fix it?

9 MS. BROWNSTEIN: I agree, Your Honor.

10 THE COURT: I mean, that seems a little bit weird.

11 MS. BROWNSTEIN: I actually agree, which is why --

12 THE COURT: But they really -- what they really lockup
13 is they don't want -- they don't want Mr. Stamer's client to
14 get lobbied or they don't want the voting public to be
15 influenced one way or the other. That, to me, is what the real
16 lockup is going on here. It doesn't mean that good lawyers
17 can't fix something that needs to be fixed.

18 MS. BROWNSTEIN: Well, maybe amongst each other, but
19 I'm talking about the other parties who are not signatories who
20 are affected by the plan. So for example --

21 THE COURT: But legally, your client is not affected
22 by it. Your client is unimpaired, right?

23 MS. BROWNSTEIN: Well, I think we have -- that issue
24 is out there whether or not we're unimpaired.

25 THE COURT: The -- well --

PG&E Corp., Pacific Gas & Electric Co.

1 MS. BROWNSTEIN: And the debtor's ability, I know --

2 THE COURT: Wait a minute. Excuse me.

3 MS. BROWNSTEIN: Sorry. Go ahead.

4 THE COURT: How is it out there? Where are you
5 impaired? Not being paid post-petition interest or if you deny
6 it -- and I haven't made a ruling yet --

7 MS. BROWNSTEIN: Right.

8 THE COURT: -- that's not impairment in a legal sense.
9 And same with the keepwells. I mean, what are you impaired as
10 a legal matter?

11 MS. BROWNSTEIN: Well, I think we've argued that the
12 proposed treatment actually renders us impaired. But I won't
13 address the impairment or the unimpairment --

14 THE COURT: Okay.

15 MS. BROWNSTEIN: -- which I know are for another day.

16 THE COURT: Okay.

17 MS. BROWNSTEIN: But for example, if our notes are
18 reinstated, right, the noteholders will be a very significant
19 creditor going forward of the debtors and obviously have an
20 interest in ensuring that there's long-term viability of the
21 debtors --

22 THE COURT: And --

23 MS. BROWNSTEIN: -- as all creditors.

24 THE COURT: -- as I said before, you may not be
25 voting, but you have a right to object and raise these are

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1 delay arguments all you want, right?

2 MS. BROWNSTEIN: Absolutely.

3 THE COURT: Okay.

4 MS. BROWNSTEIN: So I'm just reading the -- I didn't
5 write the RSA, so I'm just reading the words, which says, "They
6 shall not participate in the formulation of any restructuring
7 that's not the amended plan." So I'm just reading what I see,
8 and from what I see, that provision, in addition to all the
9 other anti-competitive provisions, are problematic from our
10 prospective.

11 So you had asked about the lockup, so I just wanted to
12 raise that one issue, which hadn't been raised for Your Honor.

13 THE COURT: Okay. It strikes me that that can't
14 possibly operate against proponents. So they can't fix
15 something that needs to be fixed, nor can it operate against
16 parties who -- individual creditors that say there's a problem.
17 Like take the Adventist interest of the billion dollars. If
18 their counsel says, look, there's a problem here; we need to do
19 this or that or the other thing. I don't think that we're
20 violating -- anybody's violating any lockup by fixing things in
21 that way.

22 MS. BROWNSTEIN: And so I guess my question -- so
23 would mediation continue and negotiations continue where other
24 parties -- they would be able to engage with noteholders, in
25 terms of formulating a confirmable plan with a global

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1 resolution --

2 THE COURT: Well, I don't know. If I --

3 MS. BROWNSTEIN: -- or is that off the table, based on
4 the finding?

5 THE COURT: I haven't really thought about that.

6 MS. BROWNSTEIN: Yeah.

7 THE COURT: If I approve this agreement as is, I guess
8 the lockups are what they are until people come up with a way.
9 Come on; that wasn't what we meant. If I don't approve the
10 lockup, then obviously it's not an issue.

11 MS. BROWNSTEIN: Right. Thank you.

12 THE COURT: Okay.

13 MS. BROWNSTEIN: I just want to point out that this
14 side of the room, obviously, it wants to be involved to
15 continue mediation and continue the formulation of a potential
16 global resolution. We would hope that these lockup provisions
17 don't preclude that.

18 THE COURT: Okay. Thank you, Ms. Brownstein.

19 MS. BROWNSTEIN: Thank you, Your Honor.

20 THE COURT: I'm going to take a break for everyone's
21 convenience for a few minutes. Oh, unless, Ms. Mitchell, do
22 you want to --

23 MS. MITCHELL: I did.

24 THE COURT: -- say something now. Because what I was
25 going to say is I want to hear from the governor's office and

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1 also the TCC and then I'm going to let the proponent -- the
2 debtor's side say what they want to say. I don't mean to cut
3 off the City of San Jose or Mr. Abrams, and I'll acknowledge
4 either of them for a moment. I just want to take a break for
5 everyone's convenience.

6 So Ms. Mitchell -- but your role is --

7 MS. MITCHELL: No. I'm happy to go --

8 THE COURT: -- important here.

9 MS. MITCHELL: I'm happy to go after because I think
10 it might be better.

11 THE COURT: Okay. The gentleman who was standing up,
12 were you here for the City of San Jose?

13 MR. ABRAMS: Sorry. Mr. Abrams, I --

14 THE COURT: Oh, Mr. Abrams. Okay. Mr. Abrams, yeah,
15 go ahead if you want to make a brief statement. I mean, I --

16 MR. ABRAMS: Sure.

17 THE COURT: A lot of your arguments really aren't
18 something that I can deal with today. You don't want the
19 governmental agencies participating with the tort claimants,
20 and that's really not for today's --

21 MR. ABRAMS: Sure.

22 THE COURT: -- discussion. And you don't like the
23 corporate structure. That's not for today either.

24 MR. ABRAMS: Sure.

25 THE COURT: The governor's got that on his plate. His

PG&E Corp., Pacific Gas & Electric Co.

1 counsel does. And it's something that might very well be dealt
2 with at confirmation. And similarly, the treatment of the Tubb
3 Fire victims versus someone else. Those all seem to be
4 important issues, but not relevant to today's issues. So just
5 tell me what today is for.

6 MR. ABRAMS: Yes. Thank you, Your Honor. My name is
7 Will Abrams. I am a Tubbs Fire survivor, which brings me to
8 this court. And I'm here; I'm sort of independent of the TCC
9 because I'm concerned that what is before us in the RSA is
10 leaning towards and expedient plan, but not an effective plan.
11 And so I wanted to put forward some things relevant to the RSA.

12 THE COURT: But I don't want you to turn this into an
13 argument about confirmation.

14 MR. ABRAMS: No, no, no.

15 THE COURT: If you have a theory that approving the
16 RSA is -- will, itself, be detrimental to the plan process,
17 I'll listen to you. But beyond that, I don't want to turn it
18 into something that isn't on the table here today.

19 MR. ABRAMS: Understood.

20 THE COURT: Go ahead.

21 MR. ABRAMS: And I appreciate the process as I learn
22 it as I go here. But what concerns me is the time element of
23 this, right? So AB 1054 is there, June 30th, got to get it
24 done. If we're down the road and June 30th is approaching and
25 we have an uneffective (sic) plan, but we need to take some

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1 expedient shortcuts, that's a concern for me.

2 As I look at the RSA, one of the things that strikes
3 me as I look at how it should be reviewed, is that it needs to
4 show signs of restructuring. And there's nothing in the RSA
5 that points to --

6 THE COURT: Isn't that exactly what the governor's
7 letter says? Doesn't the governor's letter -- did you read the
8 governor's letter?

9 MR. ABRAMS: I read the governor's letter, and --

10 THE COURT: It says, get your act together at the
11 corporate level. And --

12 MR. ABRAMS: Absolutely, Your Honor. Yes.

13 THE COURT: And I'm not doing that today, okay?

14 MR. ABRAMS: Absolutely. But --

15 THE COURT: So listen, Mr. Abrams, I don't mean to be
16 impatient with you. These are complicated. But if Mr.
17 Karotkin stood up and said, guess what, there's been a hundred
18 percent change of the board, so would you please approve the
19 RSA? I'd say, it doesn't matter if the board changed or not,
20 the RSA has to be tested on its own merits, not who the
21 corporate officers are --

22 MR. ABRAMS: I'll leave that --

23 THE COURT: -- running the show, okay?

24 MR. ABRAMS: I'll leave that alone. You know, I have
25 concerns that that is not going to take place, but I'll leave

PG&E Corp., Pacific Gas & Electric Co.

1 that alone.

2 The other point here, which I think is the business
3 judgment. Part of what needs to be in here is to show sound
4 business judgment. And so what I don't see in this RSA is
5 sound business judgment. This is more of the same. This is
6 not changing anything and expecting things to be different.
7 That is not --

8 THE COURT: Mr. Abrams -- Mr. Abrams --

9 MR. ABRAMS: That is not --

10 THE COURT: -- the committee that represents you in a
11 representative capacity has --

12 MR. ABRAMS: They don't.

13 THE COURT: I know they don't individually.

14 MR. ABRAMS: Yes.

15 THE COURT: And you have a right to be heard. I'm not
16 denying that. That committee, represented with experienced
17 counsel and experienced advisors, have recommended a proposal
18 that creates this 13.5-billion-dollar fund to compensate people
19 such as you.

20 MR. ABRAMS: Yes.

21 THE COURT: And if you don't like that treatment, you
22 have a right to be heard. But that doesn't go to the question
23 of whether I disapprove this particular RSA. Remember what the
24 letters RSA stand for. Restructuring Support Agreement.

25 MR. ABRAMS: And that's why I didn't see any

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1 restructuring in it, which is why I was concerned.

2 The last point I will make -- or actually two last
3 points if I can is one, that -- part of this is, does it have a
4 reasonable chance of success? So I thought that that was part
5 of what needs to be looked at here. And again, if it's just
6 looked at from that standpoint, it does to me appear that it's
7 heading in the opposite direction from that. So I'm concerned,
8 and I think it should be a concern of the Court.

9 THE COURT: Well, you stated in your paper that there
10 were corporate structure issues and climate risks. And again,
11 we all want the climate risk to be resolved, but those aren't
12 things that I have any say about today, so it --

13 MR. ABRAMS: It's just directional. I'm not saying it
14 needs --

15 THE COURT: Okay.

16 MR. ABRAMS: -- to be solved today, but if they're
17 headed in this direction, and the right prudent path, as a
18 reasonable manager is in that direction, then this is going in
19 the wrong direction --

20 THE COURT: Okay.

21 MR. ABRAMS: -- and that, to me, means it shouldn't be
22 approved.

23 THE COURT: Okay.

24 MR. ABRAMS: And one last point I would say as has
25 been brought up before, competition is a good thing for

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1 wildfire survivors. This one-billion-dollar number that was
2 discussed that is unknown to wildfire survivors is part of the
3 problem.

4 THE COURT: Which billion do you mean?

5 MR. ABRAMS: So part of what was -- I heard these --

6 THE COURT: You mean the Butte County settlement?

7 MR. ABRAMS: No. What I heard being said is that the
8 opposing plan comes forward with a better package for wildfire
9 survivors, but they will never see it. They will never know it
10 exists because they're only being represented by the TCC; can't
11 dig into the plans. The attorneys from the TCC have to
12 represent that this is the best thing since sliced bread. And
13 that will give the wildfire survivors very little information
14 to make a very complicated decision. And I think short of
15 having a disclosure statement that has all sorts of bells and
16 whistles that do not lead to a good result, I think that this
17 is a -- leaves them impaired, which is why I'm --

18 THE COURT: Okay. I'm going to stop you by telling
19 you this is not approval of a disclosure statement, okay?

20 MR. ABRAMS: I understand, but my -- I understand.
21 But again, so the RSA itself and the fact that there's no
22 competition associated with the RSA, I think leaves wildfire
23 survivors impaired down the line.

24 THE COURT: Okay.

25 MR. ABRAMS: And the fact that this needs to be in the

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1 direction of a reasonably approved plan, I think is a problem.

2 THE COURT: Okay. Mr. Abrams, thank you very much for
3 your comments.

4 MR. ABRAMS: Thank you. I appreciate it.

5 THE COURT: Does the City of San Jose wish to be
6 heard -- it's representative?

7 MS. CECIL: Your Honor, Jennifer Cecil, on behalf of
8 the City.

9 THE COURT: I need you at the microphone. And then
10 I'm going to take a break, after I hear from you, ma'am. So
11 just state your name again, please.

12 MS. CECIL: Yes, Your Honor. Jennifer Cecil on behalf
13 of the City of San Jose. We had one question that we had put
14 in our statement relating to how the aggregate fire victim
15 consideration was being calculated, but in the amendment that
16 was filed last night, that appears to have been addressed. So
17 we just reserve our rights at this point as to the
18 confirmation.

19 THE COURT: Okay. Thank you, Ms. Cecil.

20 MS. CECIL: Thank you.

21 THE COURT: All right. I'm going to take a fifteen-
22 minute break, and then I'd like to hear from the TCC and then
23 the opponents to the plan.

24 (Recess from 3:15 p.m., until 3:35 p.m.)

25 THE CLERK: All rise.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Please be seated, everyone.

2 Ms. Dumas, are you going to do the honors, or Mr.
3 Julian?

4 MR. JULIAN: Both.

5 MS. DUMAS: I'll start it. I'll start us off.

6 THE COURT: Okay.

7 MS. DUMAS: Good afternoon, Your Honor. Cecily Dumas,
8 Baker Hostetler, on behalf of the official committee of tort
9 claimants. Thank you for the opportunity to address the Court
10 as the non-planned proponent party to this RSA.

11 The first thing I'd like to clarify, Your Honor, is
12 that this process of the tort claimants' committee, as well as
13 the legal representatives of over seventy percent of tort
14 claimants, was not a process undertaken lightly.

15 We were sincere when we came to the Court before you,
16 a couple of months ago and asked you to lift exclusivity in
17 order that a competing plan be permitted to go forward. We
18 understand the -- we believe we understand the economic terms
19 of a competing plan. We believe we understand what the
20 creditor plan offers tort claimants. We believe that we
21 understand the governor's explanation of the current
22 infirmities of the debtors' plan, as well as the governor's
23 current belief that the bondholder plan fails to comply with AB
24 1054 at the moment.

25 The TCC has no incentive whatsoever, nor do the

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1 consenting fire claimant professionals have any incentive, to
2 agree to anything other than the best treatment of all tort
3 claimants that can be achieved under complex circumstances. So
4 I want to make sure that everyone understands, including those
5 laypeople to the extent I can explain in those lay terms, that
6 we took into account a lot of different things that laypeople
7 may not understand when we reached our decision to enter into
8 an RSA with the debtors.

9 We understand that the sponsors of the bondholder plan
10 are well-capitalized, sophisticated financial institutions. We
11 understand that the ideal terms of an agreement may not include
12 stock. We would have loved to get cash in an amount adequate
13 to address tort claims, as of the effective date.

14 Based on this case, the amount of cash this debtor in
15 possession could conceivably raise, the existence of the
16 subrogation settlement that preceded the TCC settlement, which
17 took eleven million in cash, and this Court has heard and all
18 of us have debated again and again and again the wisdom of the
19 debtors having put all cash in front of the subrogation claim
20 holders and not the tort claimants; we have not missed any of
21 these points. We have taken them into consideration, along
22 with other considerations that are not economic, not purely
23 economic.

24 We understand, because we are in this business, that
25 this case is an extremely complicated case, that Your Honor is

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1 being asked to confirm in seventeen months from the petition
2 date, a mass tort case that has -- it's never been done before,
3 and we truly appreciate and respect Your Honor's diligent
4 efforts to do so.

5 AB 1054 provides benefits to the three major investor-
6 owned utilities that the State of California made available to
7 PG&E only if it emerges from bankruptcy by June 30, 2020. So
8 we were operating within those constraints of trying to get
9 this done promptly, to have reorganized PG&E have availability
10 to a substantial fund.

11 We are also extremely cognizant of the fact that some
12 of the victims, some of the tort claimants, have been waiting
13 for payment from losses incurred as early as 2015. And as we
14 saw from the Ghost Ship claimants, 2016, but particularly the
15 wildfire claimants of 2017 and in particular 2018, those
16 claimants, those victims who we've come into court and the
17 Court has acknowledged, still have temporary housing and need
18 money. So we understand that people need to start rebuilding
19 their lives, and in order to do that, they need some money
20 available, made available from this bankruptcy case, to get in
21 their pockets as expeditiously as we can accomplish that.

22 As part of that and something that is -- those goals,
23 and something that is not immediately comprehensible to
24 laypeople, is the concept of a fair and equitable plan, and
25 that the equity security holders have rights in this case, and

PG&E Corp., Pacific Gas & Electric Co.

1 that it was our considered conclusion in reaching this RSA that
2 the time in which we would love to achieve confirmation and
3 payment is easier with a debtor-sponsored plan. It's not to
4 say anything criticizing the creditor plan. We are, at the
5 moment, coproponents of a creditor plan. But we understand
6 that one of the facts of life is that it is very difficult for
7 a creditor plan to get through contested confirmation,
8 contested by equity security holders, and a regulatory process
9 in the time frame we all have.

10 As I said in my comments this morning, we are in an
11 imperfect world, an imperfect world in which I and my
12 colleagues, who represent TCC members, we're not alone. When
13 we engaged in settlement discussions with the equity security
14 holders and the debtor, there were lawyers in the room who, as
15 I said this morning, represent the vast majority of TCC, the
16 tort claimants. They not only represent personal injury
17 claimants but, to correct Ms. Winthrop's comments this morning,
18 they represent parties with substantial property damages
19 claims, in the aggregate in excess of Adventist property damage
20 claims.

21 We think that in view of the participation of numerous
22 law firms who represent thousands of clients, to whom they owe
23 their individual fiduciary duties, signing onto this, whether
24 or not the TCC signed, I mean, we fortunately were able to
25 stick together, but these law firms, which represent in the

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1 tens of thousands of claimants, could have carried the tort
2 claim vote without the TCC's recommendation of this RSA. As I
3 said, we didn't want to do it that way, and fortunately we were
4 able to all jointly reach, after difficult discussions, an
5 agreement with the debtor and the equity security holders that
6 satisfied the requirements of thousands of individually
7 represented tort claimants, and the fiduciaries to all tort
8 claimants, the TCC.

9 This has not been an easy process. It has not been
10 one in which we didn't think of any of the concerns that have
11 been raised by various parties who came to the podium today.
12 And with respect to those parties who made those observations,
13 we agree completely. We would prefer not to have stock.

14 Some of the -- actually, some of the individual
15 victims believe that they will be distributed stock, so we've
16 been backpedaling saying, no, the trust will be distributed
17 stock, but that stock will be liquidated -- and hopefully at a
18 gain, not a loss -- and be deposited in the resolution trust
19 for the cash distributions to victims.

20 We are, unfortunately, having worked around the clock
21 for several weeks now, not able today to present the Court and
22 the parties with what that resolution trust looks like, what
23 the procedures for payments of individual claimants may look
24 like, and they are dying to know. We know our work isn't done.
25 We have endeavored to commit in the RSA to have, by January

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1 20th, the resolution trust agreement, and the claim procedures.

2 All I can say now is that, based on my own personal
3 involvement in that process and the involvement of the other
4 lawyers who are engaged in it, it is intended to be
5 transparent, it is intended to be consistent, nobody is going
6 to be left out, claims will be evaluated by the resolution
7 trustee, professionals on behalf of the resolution trustee, so
8 that claimants are treated fairly and consistently. And we
9 hope, as best as our damages experts have been able to tell us,
10 the TCC, that we hope that we will be able to satisfy victim
11 claims from that trust.

12 We hope that we will not have a shortfall. We've done
13 our best to negotiate the best number we can, with the belief
14 that it will not result in a shortfall. So --

15 THE COURT: So it's just predicting an outcome that
16 might have been predicted, or might have been an outcome with a
17 formal estimation trial, and a summation has to cover all those
18 claims --

19 MS. DUMAS: Yes, sir.

20 THE COURT: -- not just the victims' claims.

21 MS. DUMAS: Yes, sir. And we thank the Court for
22 extending the bar date for those individuals who were unable to
23 participate, but we've drawn data and we've drawn conclusions
24 from the claims that are in the system, and we remain
25 cautiously optimistic, with no promises, but cautiously

PG&E Corp., Pacific Gas & Electric Co.

1 optimistic.

2 And I'm going to stop right here to -- Mr. Julian is
3 going to reserve just a minute on the assigned causes of action
4 because they think those --

5 THE COURT: But I need one of you, one of the two of
6 you, to talk to the question of the lockup, and --

7 MS. DUMAS: That's going to me.

8 THE COURT: -- and the switching over for the --

9 MS. DUMAS: Yeah. That's going to me.

10 THE COURT: Last month, you were opposed to the lockup
11 on the other side, right?

12 MS. DUMAS: Yeah. We --

13 THE COURT: Go for it.

14 MS. DUMAS: We are nothing if not self-interested in
15 this process, Your Honor. We understand where the bond holders
16 are coming from. But I will reserve one minute for Mr. Julian
17 to address the assigned claims, and then --

18 THE COURT: I'm not --

19 MS. DUMAS: -- I'm going to come to the meat of the
20 coconut.

21 THE COURT: -- I'm not going to give him a time limit.
22 I'm going to let him have as much time as he wants, but do
23 you --

24 MS. DUMAS: Thank you, sir.

25 THE COURT: -- do you want to pass to him now? Do you

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1 want him to go to that coconut?

2 MS. DUMAS: No. I'm going to finish up --

3 THE COURT: Okay.

4 MS. DUMAS: -- on really what the Court wants to
5 understand, what the UCC wants to understand, what the bond
6 holders want to understand, which is why we had a joint plan,
7 which we believed, sincerely, had beneficial economics for tort
8 claimants, and why, having done that just two months ago, are
9 we switching over to support a debtor plan.

10 One of the reasons is one I've already described,
11 which is in practicalities, a debtor plan is going to be easier
12 to get to a faster confirmation. That's not the only reason.

13 We believe that, based on the improvements of the
14 value of the proposal coming from the debtors and the equity
15 security holders, together with the uncertainties associated
16 with the bond holder proposal, that this is the -- we are
17 fulfilling our fiduciary duties at this point in time by
18 signing on to an integrated contract with the debtors and the
19 equity security holders, recognizing that it is an integrated
20 contract that includes provisions that require the TCC and the
21 signing law firms to agree to support this plan.

22 Now, why do I say that? For one reason, I think we
23 are taking our cues in this case, in part, from the parties who
24 will be before you, giving you their best estimate as to
25 whether this plan is confirmable within the requirements of the

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1 State of California.

2 THE COURT: You mean at a confirmation hearing, or --

3 MS. DUMAS: Yes. --

4 THE COURT: -- disclosure statement hearing?

5 MS. DUMAS: We believe that the California Public
6 Utilities Commission bankruptcy OII process, as supervised or
7 monitored by the governor's office, is a process which we trust
8 will bring the debtors' plan to the point of improvement, based
9 on what we know today, that will allow the Court to confirm a
10 plan that is sponsored by the debtors. It may not be this
11 plan, and as you said before the break, there's nothing that
12 prevents the debtors from improving or modifying this plan, if
13 it's required by the regulators and the governor's office, to
14 comply with state law.

15 THE COURT: So the lockup doesn't gag you, or --

16 MS. DUMAS: So the lockup --

17 THE COURT: -- the folks on the debtors' side, right?

18 MS. DUMAS: -- the lockup is part of an integrated
19 agreement, Your Honor.

20 THE COURT: Right. But it doesn't --

21 MS. DUMAS: They gave stuff up --

22 THE COURT: -- it doesn't prevent you and your
23 colleagues on that table from sitting with those folks on the
24 debtors' side and improving the plan.

25 MS. DUMAS: I think that we are not adverse to,

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1 really, the guidance of the parties whose responsibility it is
2 to the State of California, to have this debtor emerge
3 financially, and financially capable, and having the governance
4 integrity that the governor is demanding.

5 And Your Honor, I had the pleasure of meeting him in
6 Sacramento. I was summoned to a meeting. He didn't know I was
7 there, but that doesn't matter.

8 THE COURT: How do you know?

9 MS. DUMAS: He's an impressive guy.

10 THE COURT: How do you know he didn't know?

11 MS. DUMAS: Well, I don't stand out in a crowd, Your
12 Honor.

13 But he is, as in words that I'm not inventing myself,
14 I've been told this, he is all-in. This is not a -- as his
15 papers indicate, this is not a rubber stamp. It is up to
16 parties who have the overall interests of the State of
17 California in this reorganization, the debtors' fiduciary
18 duties to proceed forward.

19 And there may be a point in time at which the
20 financial holders who are outside the process get invited into
21 the process. There may be a point in time in the future where
22 the bond holders get married into the equity plan. There may
23 be, as the Court suggested, a time in the future, I hope not,
24 that the debtors' plan falls over and the bond holders' plan is
25 left standing. But based on what we know now, based on what

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1 we've been able to tell from the regulators, the governor's
2 office, and all the circumstances that we are aware of right
3 now, with what we're facing in the next couple of months --
4 Tubbs trial on January 7th, the estimation starting in
5 February, and the June 30 looming deadline -- the TCC and the
6 consenting fire claimant professionals have elected to enter
7 into this RSA with what we believe to be the best application
8 of our fiduciary duty we can apply as of today. So we --

9 THE COURT: So -- so what do you say about the lockup?
10 The challenge to the lockup, and particularly the -- I was just
11 looking for my version of the governor's letter, his -- the
12 last sentence in his letter seems to suggest that the lockup is
13 still on his mind.

14 MS. DUMAS: Yes, he does. And Your Honor may take the
15 objections of the governor and the official committee of
16 unsecured creditors and the bond holders and strike the lockup.
17 I believe we would be back at square one. I think the debtor
18 and the equity security holders can tell you where they would
19 come out on that.

20 THE COURT: But I need to know what your clients --

21 MS. DUMAS: We went into the agreement --

22 THE COURT: -- your clients want that lockup.

23 MS. DUMAS: -- knowing there is a lockup.

24 THE COURT: So you're good colleague, Mr. Julian, who
25 you're going to make him get up in a minute, he was fighting

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1 against the lockup when I was considering the subro plan.

2 What --

3 MS. DUMAS: Yes. Well, I was raising my voice to you
4 two months ago, asking you to terminate exclusivity.

5 THE COURT: Right.

6 MS. DUMAS: So --

7 THE COURT: And I did.

8 MS. DUMAS: And we appreciate it. And it helped us
9 get where we are. But we negotiated these terms. These terms
10 include a lockup. It's an integrated deal. We understand
11 that.

12 THE COURT: But let's back up for a minute and not
13 talk about the sophisticated bankruptcy professionals that
14 you've been working with and the nonbankruptcy but
15 sophisticated professionals, the plaintiffs' lawyers and so on,
16 and let's switch topics to the fire victim out there in
17 Paradise, California, or somewhere else. And leave aside just
18 that one little difference about do you get stock or money.

19 From the victims' point of view, which plan -- why
20 does it matter which plan? The same amount of money, the same
21 fund, the same damage claim that that person suffers, the same
22 matrix and mediation process will hopefully crank out for that
23 victim a check. What difference does it make if we lock up one
24 alternative? Not completely. It's not as though we literally
25 lock it up, but at least lock up the ability of the lawyers

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1 that you're working with to explain and perhaps recommend a
2 vote for both plans? Why is that a good thing rather than a
3 bad thing?

4 MS. DUMAS: Oh, that's certainly a good question, and
5 one in which I, personally, have had dozens if not hundreds of
6 conversations with individuals about that very topic. We think
7 it's a false comparison. We don't think there's a apples to
8 apples comparison between a plan proposed by the debtors and a
9 plan proposed by creditors, especially when you have an
10 impaired class that has made it known that they will challenge
11 that. And the elimination of the Tubbs trial and estimation is
12 of great value because it enables this case to move through
13 Chapter 11 more quickly. There is more certainty with the
14 debtor plan.

15 Now, we have heard that there is a second plan, which
16 we -- should be considered apples to apples, but respectfully,
17 with the way that we analyzed the entire bankruptcy situation,
18 we don't believe that, presently, to be the case.

19 THE COURT: Well, I'm sorry, you're talking about a
20 third plan?

21 MS. DUMAS: No, no, no. I'm talking about -- we don't
22 believe they're -- that a debtor plan and a creditor plan are
23 not apples to apples --

24 THE COURT: Okay.

25 MS. DUMAS: -- routes for tort claimants.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: But why is that so? Again, visualize
2 you're explaining this to a victim, and the victim says I've
3 got Mr. Stamer's plan, and I've got Mr. Karotkin's plan, or
4 whoever wants to take the credit for it, which one shall I
5 pick? Why wouldn't you say pick them both? They have the same
6 result for you. Unless you want to do like Mr. Abrams did and
7 complain about the corporate structure, which he's entitled to
8 do. And somebody else might just hate PG&E, they'd be happy to
9 get rid of all of them, and that's -- I can understand that,
10 too. But in terms of what a victim gets by way of recovery,
11 why does it matter? In other words, why does it matter such
12 that I have to ignore the official creditors' committee -- now,
13 and I'm not ignoring Mr. Stamer.

14 MS. DUMAS: No, no, no. I understand.

15 THE COURT: But the official creditors' committee has,
16 from day one, played sort of a middle-of-the-road player here,
17 and Mr. Bray couldn't have been more emphatic about what he
18 worries about.

19 MS. DUMAS: Um-hum.

20 THE COURT: Why shouldn't I worry about that and at
21 least make sure that the choices stay as open as possible?

22 MS. DUMAS: I believe that, in a general sense,
23 competition, or strengthening -- I prefer to refer to it as
24 strengthening -- reorganized PG&E is a good thing. When
25 somebody asks me why don't we vote for a creditor plan as

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1 opposed to a debtor plan, I say, would you like to be paid in
2 two to three years, without the benefit of AB 1054, after a
3 contested confirmation, or would you like to try to get through
4 with the same or similar terms?

5 THE COURT: But why -- the same AB 1054 applies
6 regardless of who the sponsor of the plan is. And if Mr.
7 Stamer and his group can't satisfy AB 1054, they won't even get
8 invited to try to convince me. So why would their plan take
9 two more years to get your constituents their money?

10 MS. DUMAS: Because I don't think --

11 THE COURT: Excuse me. Because of the lockup.

12 MS. DUMAS: Yeah, yeah.

13 THE COURT: In other words, lock it --

14 MS. DUMAS: So --

15 THE COURT: -- relate the lockup to --

16 MS. DUMAS: Yes.

17 THE COURT: -- what might follow from that.

18 MS. DUMAS: So I will defer to counsel for the debtor.
19 My belief is that when he comes to the podium, he will tell you
20 that this RSA will evaporate without all the integrated terms.
21 So we will not -- my belief is that we will not have an RSA
22 with the debtors in equity if the lockup is removed.

23 THE COURT: They're not playing chicken?

24 MS. DUMAS: I don't think they're playing chicken,
25 Your Honor.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: With you or me, either one of us.

2 MS. DUMAS: I don't know that they --

3 THE COURT: Okay. Again, I don't want you to --

4 MS. DUMAS: -- they shouldn't play chicken with you --

5 THE COURT: I don't want --

6 MS. DUMAS: -- but they may be playing chicken with
7 me --

8 THE COURT: I don't want you to reveal --

9 MS. DUMAS: -- but I don't want to take that risk.

10 THE COURT: I don't you to reveal confidences,
11 obviously, but am I supposed to really think that might happen?
12 I mean, really? Do you think that I have -- I'm supposed to
13 think that is what will happen?

14 MS. DUMAS: I think --

15 THE COURT: I mean, all we're talking about, I
16 think -- again, I'll oversimplify to illustrate the point --
17 we're just saying if I say no lockup, of course Mr. Bennett and
18 his clients, and Mr. Karotkin, they can all fold their tents
19 and say see you later, and go back up to Judge Donato and say,
20 when do we start the estimation trial? But they might also
21 say, let's just go with our plan and sell the more attractive
22 plan, and the plan that people will vote for.

23 So why should I just -- why should I close the option
24 of a fallback, in case the debtors' plan runs aground, for
25 whatever reason?

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1 MS. DUMAS: The way we addressed that answer to that
2 question in the agreement itself, is through the fiduciary out
3 of the TCC. So the TCC, if it believes that there is a
4 superior -- paragraph 17 -- if it believes that a superior plan
5 develops, if Ms. Mitchell stands up now and says I've just
6 talked to my client, and the bond holder plan is AB 1054
7 compliant, the TCC has a fiduciary out from this RSA.

8 THE COURT: Which one? Tell me again, that --

9 MS. DUMAS: I'm sorry, Your Honor.

10 THE COURT: Paragraph 19?

11 MS. DUMAS: Paragraph 17.

12 THE COURT: 17, yeah. I think it's one that got --
13 changed its number slightly, right?

14 MS. DUMAS: Oh, I'm sorry. 19.

15 THE COURT: 19.

16 MS. DUMAS: Yes. I apologize, it did get -- it's
17 paragraph 19, page 14 --

18 THE COURT: Yeah, no.

19 MS. DUMAS: -- of the RSA.

20 THE COURT: I saw that in there, but you know -- so
21 again, tell me in layman's terms what does that mean? Because
22 I know what fiduciary duty means, but why is it a safety valve
23 if something goes wrong here?

24 MS. DUMAS: It's our best judgment today that -- in
25 our fiduciary obligations to all the tort claimants, it's our

PG&E Corp., Pacific Gas & Electric Co.

1 best judgment today that we can actually realize those payments
2 under a plan that complies with AB 1054's timing requirements,
3 through the debtors' plan. That is our best judgment today.
4 That is why the last sentence appears in that. That is why,
5 notwithstanding the fact that the governor is sending nasty
6 grams to PG&E every few days, we have not lost hope that the
7 debtor will be able to -- as it advises us, it will be able to
8 improve the plan to a point where it is AB 1054 compliant and
9 can be confirmed.

10 If it does not, and again, we're taking our guidance
11 from the state regulators and the governor of the state, who
12 oversee this process -- if it does not, then we are no longer
13 bound by this agreement, if we receive clear indications that
14 the bond holder plan is the only plan that can go forward.

15 THE COURT: So let's suppose that you have some event
16 that persuades you -- and again, I'll personalize it for you --

17 MS. DUMAS: Sure.

18 THE COURT: -- because I'm talking to you, but the
19 committee -- the committee believes that it's no longer in its
20 fiduciary -- consistent with its fiduciary duties to advocate
21 the debtors' plan. Does that suddenly free you from any
22 lockup, and you can call up Mr. Stamer and say, sorry to have
23 dumped you back in December, but we'd like to get back into the
24 deal again; is that what you're saying?

25 MS. DUMAS: Yes, I believe it does. And that would

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1 have to be -- and we would do that advisedly, if circumstances
2 occurred that -- they would have to be material, such as the
3 commitment letters fall out. I mean, something could happen in
4 the future --

5 THE COURT: Yeah. I'm talking about something that --

6 MS. DUMAS: -- but we're talking about --

7 THE COURT: -- something that any experienced
8 bankruptcy lawyer would say, that plan is not confirmable.
9 Whether it's 1054 or just some bankruptcy code provision.

10 MS. DUMAS: Yes.

11 THE COURT: Right?

12 MS. DUMAS: Yes. We believe that enables us. And the
13 way we would handle it is we would go to the debtor first, and
14 we would say, we believe that X, Y, Z event has triggered the
15 TCC's obligation, its fiduciary obligation, to rereview the
16 circumstances based on these events which have transpired after
17 the entry of the RSA.

18 THE COURT: Okay. So I'm going to go back to the
19 question that you answered a moment ago. You said that maybe
20 the ad hoc bond holders' plan would take longer, but let's
21 assume that they, along with the debtor, both get disclosure
22 statement approval and they both go out for solicitation and
23 vote. Why do you think that payment, under their version, if
24 that plan were confirmed, would be delayed? Leaving aside
25 appeals, because appeals are always going to be an issue, and

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1 we know how to deal with appeals sometimes, but why would there
2 be a different timing?

3 MS. DUMAS: Yeah. I think that the answer to that,
4 and I may have said it less clearly than I could have, I think
5 that if this goes away, which I think it would, without a
6 lockup, then I don't think there's 13.5 on the table from the
7 debtors and the equity security holders. I think they have
8 agreed to that number, notwithstanding whatever I'm told was
9 said upstairs, I think they have agreed to that number based on
10 this integrated agreement.

11 THE COURT: Is there 13.5 on the table from the bond
12 holders?

13 MS. DUMAS: Yes, it is.

14 THE COURT: Nothing wrong with that. Same 13.5.

15 MS. DUMAS: Nothing wrong with that, except that the
16 equity security holders have a right to be heard --

17 THE COURT: They do.

18 MS. DUMAS: -- and they have a right to contest
19 confirmation, and they have a right to require the parties, I
20 believe, to go through the estimation proceedings.

21 THE COURT: So you agree that -- I raised the question
22 before, and I think I talked about it earlier, leaving aside
23 whatever Judge Donato may have meant, and if that is not
24 relevant, then the bond holder -- I mean, excuse me, the equity
25 holders -- have a right to make sure there's not an unfair

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1 valuation that overpays the tort claimants, right?

2 MS. DUMAS: I believe that is correct, Your Honor.

3 And I believe that bond holders' counsel will confirm that, and
4 I believe that the debtors also interpret the agreement in the
5 manner I've suggested, which is, if this integrated agreement
6 isn't approved, our deal is off the table, the 13-5 is off the
7 table, we're back with the grouchy Honorable Randall Newsome,
8 trying to get us into mediation again.

9 THE COURT: Is that with an E?

10 MS. DUMAS: And he's tough.

11 THE COURT: Is there an E on his name there?

12 MS. DUMAS: No, no. The one without an E is never
13 grouchy, but the one with an E is consistently grouchy because
14 he's trying to get a deal done.

15 THE COURT: He's right behind you. You better be
16 careful what you say.

17 MS. DUMAS: No, I know he's here. I greeted him. And
18 we had many, many difficult hours together.

19 We stand by this RSA, Your Honor. I understand you
20 want to turn over every rock to see if there's anything that
21 could be done differently, and you may say --

22 THE COURT: No, no.

23 MS. DUMAS: -- I won't approve this with the lockup,
24 and we're cognizant of that.

25 THE COURT: Right. But I have to figure out if that's

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1 a risk that is worth taking from my point of view, and we have
2 the anomaly again of the notion that -- I don't think we've
3 heard a single person today really say it's a bad settlement.
4 In fact, you'll recall that -- I believe it was Mr. Bray,
5 again, said why don't we just carve out and set aside this
6 lockup stuff and turn this into a 9019 motion both ways, and I
7 say done deal? Lockup -- 13.5 is good for the goose and good
8 for the gander, and we're done with that issue.

9 MS. DUMAS: We would absolutely be thrilled with sauce
10 for the goose is sauce for the -- we would love to have this
11 13.5 chiseled in stone or etched in your podium. We would love
12 to be able to do nothing more than leave the stage in this case
13 knowing that we have secured this number for the victims.

14 THE COURT: Okay.

15 MS. DUMAS: Thank you, Your Honor.

16 THE COURT: Thank you, Ms. Dumas.

17 Mr. Julian, your partner gave you one minute; I'll
18 give you more time, if you want.

19 MR. JULIAN: I think it's better to have Mr. Pitre go
20 first.

21 THE COURT: Oh, Mr. Pitre? Okay.

22 MR. PITRE: Thank you, Your Honor.

23 MR. JULIAN: Stay on the same subject.

24 MR. PITRE: Frank Pitre.

25 THE COURT: Mr. Pitre, I didn't know I was going to

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1 hear from you today.

2 MR. PITRE: I will try to brief, but I --

3 MS. DUMAS: Take your time.

4 MR. PITRE: -- I do -- I do think it's important on
5 this last issue about the lockup and the agreement between the
6 tort victims.

7 THE COURT: Between the tort victims' lawyers.

8 MR. PITRE: Correct.

9 THE COURT: I don't want to diss the lawyers, but it
10 is the lawyers who made the agreement.

11 MR. PITRE: That is correct.

12 THE COURT: Okay.

13 MR. PITRE: Consistent with our fiduciary obligations
14 to our clients, there was a group of lawyers, not just me --

15 THE COURT: No, I know.

16 MR. PITRE: -- but Mike Kelly, Steve Campora, Amanda
17 Riddle, Dario de Ghetaldi, Mikal Watts, Jerry Singleton,
18 individuals with vast experience in these cases, who came
19 together.

20 And I must tell you, Judge Newsome is no wilted
21 flower, that's for sure. And he made it very clear --

22 THE COURT: I sent out the A team, you know.

23 MR. PITRE: You did. And we got the A team, and we
24 got an education in bankruptcy.

25 THE COURT: Where do you think he learned it?

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1 MR. PITRE: Well, I'll let him answer that. But I
2 will tell you that those were very difficult negotiations, and
3 there were a lot of factors that we had to take into account.
4 And although I've had my disagreements with Bruce Bennett, one
5 of the things I will say about him, is he is a very worthy
6 advocate.

7 And this issue of a lockup was a very tough issue to
8 deal with. We went back and forth, yelled and screamed, and
9 did everything that one can do to test, to use Your Honor's
10 words, was this playing chicken? Well, I can tell you without
11 any uncertainty, this was not chicken. This deal was not going
12 forward without a lockup. And he can confirm that one way or
13 the other, and so can Judge Newsome.

14 THE COURT: No, I don't want -- certainly don't want
15 Judge Newsome to say one word.

16 MR. PITRE: Well, I'm just saying this was an
17 immovable object. And the other thing that was immovable is
18 that without that provision, we were going to trial on Tubbs.
19 And Mr. Orsini was well aware of that and told us. And we
20 said, in no uncertain terms that we either had a deal where
21 Tubbs was going to be resolved as part of this, or not, because
22 if we had to go through a Tubbs trial and go through all of the
23 expense, the anxiety, all of the uncertainties, one way or the
24 other -- this was a case where it was a lose-lose, no matter
25 who won. And I mean that sincerely because we felt very

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1 strongly we were going to win Tubbs.

2 THE COURT: No, you certainly did.

3 MR. PITRE: And if that happened, we were looking at
4 Chapter 7.

5 So we've had these discussions with our own clients.
6 Why did we decide to go forward with this deal? Because when
7 we used all of the vast experience of all the lawyers in
8 exercising our fiduciary duties, this was the best deal that
9 could be cut, with a lockup. And there is no doubt in my mind
10 over that. None.

11 Not the amount -- we didn't leave one billion dollars
12 on the table like somebody suggested. We had financial
13 analysts that told us that that wasn't true. So nobody left
14 money on the table, and it is not within our wherewithal as
15 trial lawyers, to leave money on the table. We did the best
16 thing we could do.

17 THE COURT: Well, you know, you don't deal with
18 companies in bankruptcy very often, either --

19 MR. PITRE: That's exactly right, Your Honor.

20 THE COURT: -- because the rules change a little bit
21 there, don't they?

22 MR. PITRE: Yes, they did, and we got --

23 THE COURT: We'll bring you into the next one, where
24 it's clearly insolvent, and see what you like about that one.

25 MR. PITRE: Well, Judge Newsome made us aware of the

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1 fact that we were not playing on the same football field when
2 we were in bankruptcy court. And I can tell you that his
3 guidance, in terms of the traps and wherewithals of bankruptcy,
4 led us to take notice --

5 THE COURT: I don't even want to ask you what he said
6 about me, so --

7 MR. PITRE: Well --

8 THE COURT: -- don't say.

9 MR. PITRE: I won't say anything that's --

10 THE COURT: Don't say --

11 MR. PITRE: -- covered by the mediation privilege.

12 THE COURT: Don't say a word.

13 MR. PITRE: But there is no doubt in my mind, Your
14 Honor, that on this deal, it is the best that it gets. This is
15 not playing chicken. Chicken games are over. We got to the
16 bottom line, and I just want to thank Judge Newsome for all the
17 guidance he had.

18 THE COURT: But I'm going to stop giving him
19 strokes --

20 MR. PITRE: Okay.

21 THE COURT: -- and go back to you.

22 MR. PITRE: Yes.

23 THE COURT: You're of the opinion that the alternative
24 plan, which in many respects, has the same economic outcome, is
25 still subject to these other kinds of concerns that motivates

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1 you. And you, as an experienced professional, believe that
2 it's the right outcome, and you will be recommending it to
3 these hundreds and thousands of victims, and your fellow
4 cocounsel will be, too. And this isn't just lawyers lining up
5 their fees, it's doing the right thing for those thousands of
6 victims who didn't ask to be tied up in the bankruptcy process,
7 right?

8 MR. PITRE: I would be the first person to answer your
9 question directly, yes.

10 THE COURT: Well, I knew you'd say that, but I wanted
11 to hear it from you because, again, this whole day isn't about
12 whether 13.5 should be 14.5 or 12.5, it's about this lockup.
13 As I say, there don't appear to be any real challenges to the
14 economics of this settlement, not even from the governor's
15 point of view.

16 MR. PITRE: You are correct. We understood the
17 lockup, and indeed, we have already begun the discussions with
18 clients, and as this Court could imagine, given the press, the
19 letters, and everything that has went on in the last week,
20 there have been so many questions, so many meetings with people
21 to try to get them -- to give some comfort, because this has
22 just reopened all the wounds. They thought they had a deal,
23 then they heard they didn't have a deal, then they heard the
24 governor wasn't happy about the deal. And to be able to
25 finally give these folks some kind of confidence that there is

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1 light at the end of the tunnel and a path forward and a
2 framework, is something that will be, in my humble view, a red-
3 letter date in their lives toward closure and resolution, by
4 approving this RSA.

5 THE COURT: Okay.

6 MR. PITRE: Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Pitre.

8 Mr. Julian.

9 MR. JULIAN: I think I just should point out that I
10 believe the courtroom here hasn't heard the words lockup or
11 lock them up as many times in one day as the presidential
12 election from several years ago.

13 THE COURT: Oh, well listen: The President wrote a
14 six-page letter to the Speaker today. I mean, you ought to
15 read that, if you want to read some interesting stuff. I
16 actually did read it during the break. See, I wasn't reading
17 the RSA during the lunch break.

18 MR. JULIAN: Your Honor, briefly I would just like to
19 respond to the UCC's objection to the assignment. I
20 acknowledge Your Honor's point that that's a subject to be
21 taken up at plan confirmation time; we intend to do that, but I
22 can't let their comments go unresponded to because impressions
23 can be made, and I make only three points about it.

24 The first is the assignment of those claims was
25 material to the TCC's and the consenting professionals' view

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1 that the consideration of 13.5 billion, plus the assignments,
2 made this AB 1054 compliant.

3 THE COURT: And that plus has a dollar sign that you
4 can't know what it is, but it should be something, right?

5 MR. JULIAN: But we've looked at it. We've looked at
6 it, and that brings up a good point, Your Honor. You know,
7 some of those claims are against the tree trimmers who the
8 plaintiffs have sued previously. In fact, you may remember, it
9 was way back -- it was April, May, and June. I was in this
10 court, at this podium, trying to get those tree trimmer
11 contracts. And I told you there was going to come a day --

12 THE COURT: Um-hum.

13 MR. JULIAN: -- where we were going to look for those
14 assignments of those claims to put into a resolution trust, to
15 increase the pot for the victims in this case. So we've been
16 true to our word.

17 And I might point out point two. The lead defendant
18 in those cases that the plaintiffs have sued was Davey Trees
19 (sic). And that's my point number two. Davey Tree is a member
20 of the creditors' committee. This is the same creditors
21 committee, with Davey Tree, that supported the bond holder plan
22 for three months, with the same assignment of the claims
23 against Davey Tree, and never once came to me and said the
24 assignment of the claims against Davey Tree is problematic.
25 When they were supporting their other brethren, who are part of

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1 the creditors' committee constituency, on their plan. And it
2 is just hypocrisy, in my view, for them to come in today as
3 Johnny-come-latelies, and object to this suit, to benefit the
4 member of their committee, Davey Tree.

5 THE COURT: Well, but I -- I mean, that might be the
6 hidden agenda. And I'm not going to ask Mr. Bray or anybody
7 else to even address that. I'm focusing on does this somehow
8 undermine the reorganized company's ability to be compliant, in
9 terms of the kind of things that you were so adamant about for
10 months, and I'm sure in Judge Alsup's court particularly. I
11 don't imagine that's true, but tell me why isn't it true.

12 MR. JULIAN: Well, we are going to present evidence on
13 that, and we will get the insurance policies from Davey Tree
14 that show they are fully insured for these claims that we will
15 bring against them, and that's going to be the proof.

16 THE COURT: Well, but whether you bring claims against
17 them or not, the question is will they be -- or will someone in
18 their place, if they're not the ones -- in a position to do
19 what the company needs to do to satisfy the governor and the
20 CPUC about all the remediation that's necessary to avoid 2020
21 and 2021 fires, and beyond.

22 MR. JULIAN: Your Honor, our constituency will have
23 20.9 percent of the common stock of this company. We are very
24 focused on making sure this company is wildfire safe, and that
25 its vendors are not overburdened with litigation. So we have

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1 the eye on the ball. We will present evidence to you, though,
2 at plan confirmation, after taking the deposition of Davey Tree
3 and the rest of them, over their insurance policies -- that
4 will show that this will not impact the reorganized debtor.

5 THE COURT: Well, but if I approve this today, those
6 things are gone, unless the TCC RSA itself fails, or whether it
7 be Section 19 that Ms. Dumas described, or some other event
8 that knocks it off.

9 MR. JULIAN: Well, the assignment of the claims are in
10 both plans. They're in the bond holder plan, and they're in
11 the debtors' plan.

12 THE COURT: Well, I didn't remember that point about
13 the other plan, but the point is that's not on the table today,
14 so --

15 MR. JULIAN: Not on the table, Your Honor.

16 THE COURT: -- so by asking me, as you are, to approve
17 the RSA today, that -- listen. I don't mean listen, let me
18 state the obvious. If I thought it was a done certainty that
19 PG&E would fail, I would hardly be approving this RSA today.
20 So I have to have a belief that this does facilitate rather
21 than impede --

22 MR. JULIAN: Exactly.

23 THE COURT: -- the reorganization effort.

24 MR. JULIAN: Exactly.

25 THE COURT: But so implicit in that is that your view,

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1 and your client's view, is that the reorganized company --
2 we're not at confirmation yet, but we're taking a big step
3 towards it, and at least as to the assignment issue, that's not
4 a negative. That's not a -- that doesn't impair the ability of
5 the company to reorganize.

6 MR. JULIAN: And it's a positive, and I'll tell you
7 why. It helps the company. Those vendors are better off with
8 one lawsuit against them rather than 70,000. And today, the
9 70,000 claimants have standing to sue those tree trimmers and
10 other vendors and inspectors. In fact, Mr. Campora, whose
11 client is on the TCC, was sued in the first TRO case in this
12 case, to stop him from suing Davey's (sic) Tree.

13 And so my point is this. It -- look, we've got
14 seventy percent of the travelers, representing seventy percent
15 of the victims recommending this. They're playing ball in this
16 case. And it's better to have one lawsuit against them than to
17 have 70,000. My point being --

18 THE COURT: Well, I don't think it will be 70,000, but
19 I understand your point about the economic --

20 MR. JULIAN: Yeah. My point being if it wasn't the
21 Resolution Trust suing them, I could guarantee you that the Mr.
22 Camporas of this world will be out there filing seriatim
23 lawsuits, and that's not good for the Resolution Trust or PG&E.
24 What's good is to have everything centralized under the
25 umbrella of the Resolution Trust subject to your jurisdiction.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: What you say -- now, this is Ms. Dumas'
2 argument, but you were the one that stood there during the
3 subrogation RSA and told me how the lockup was a bad thing.

4 MR. JULIAN: Did I say that?

5 THE COURT: I think so. Yeah. What happened?

6 MR. JULIAN: Your Honor, we've talked about this.
7 There's a life to the case. I say this all the time, and it
8 was emphasized -- this point was emphasized to me at the break
9 by Ms. Riddle, Amanda Riddle, Dario's partner. And that is the
10 victims are being used as a pawn by almost everybody in this
11 case. The victims and their lawyers are kind of chess piece.
12 The governor uses us when they want to. The bondholders use
13 them. We'd like to be in one place so that we can move forward
14 and get our evidence together for confirmation rather than beep
15 bopping around from place to place. That's the answer.

16 THE COURT: Okay. Thank you.

17 MR. JULIAN: And at one point in time, it was a bad
18 idea. At this point in time, I can see the rational basis for
19 it. So thank you, Your Honor.

20 MR. BRAY: I have to say something.

21 MR. JULIAN: No, no, no, no.

22 THE COURT: Wait, wait, wait. Hold on. I'm going to
23 call the shots. I'll give you a chance, Mr. Bray.

24 The gentleman in the back. I saw you standing. Did
25 you wish to be heard? And I don't know your name.

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1 MR. REISNER: Creditors' committee, Your Honor.

2 THE COURT: Who are you, and why do you want to be
3 heard?

4 MR. REISNER: Your Honor, I'm Jeffrey Reisner,
5 McDermott Will & Emery, and I represent Davey Tree. And I --

6 THE COURT: Davey Tree is not at issue here. They're
7 just statements made. So you don't need to defend them. I
8 can't act on it. I'm not going to act on anything. So I'd
9 rather not waste time. It's 4:20. We want to get this hearing
10 done. So I'll assume that you want to defend Davey Tree. I --

11 MR. REISNER: You're --

12 THE COURT: So I'll stipulate it.

13 MR. REISNER: You're absolutely right, Your Honor.

14 THE COURT: Okay.

15 MR. REISNER: And if hypocrisy lives anyplace, it
16 lives there.

17 THE COURT: Okay. Ms. Mitchell, I need to hear from
18 you. I need to hear the governor's point of view, and then
19 I'll see who else needs to be heard.

20 MS. MITCHELL: So Your Honor, I think -- Nancy
21 Mitchell of O'Melveny & Myers on behalf of Governor Gavin
22 Newsom. I think, Your Honor, we were pretty clear in our
23 pleadings, and I would leave it to you for questions. I did
24 want to clarify a couple of things. We have worked very hard
25 to try to evaluate the plans that are currently out there to

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1 see if they're AB 1054 compliant to provide us -- in our view,
2 to provide as much feedback as we can about with the governor,
3 and the legislative leader's view is important in a 1054
4 context, and I just didn't want, when Your Honor is making what
5 is obviously a very important decision, for there to be a
6 misunderstanding around where we are.

7 All of the plan proponents have been cooperative in
8 getting us information. I should say I'm going to say
9 something nice about the debtors' management. They have been
10 tremendous in trying to work on getting the plan closer. We
11 are not there, and I can't stand here and tell Your Honor that
12 two weeks from now or a month from now that this plan is going
13 to be AB 1054 compliant.

14 THE COURT: No. And that's what we talked about this
15 morning.

16 MS. MITCHELL: Right.

17 THE COURT: I'm really focusing on where we have been
18 spending a lot of time --

19 MS. MITCHELL: Right.

20 THE COURT: -- and that is this last -- second to last
21 line of what you filed yesterday.

22 MS. MITCHELL: Yes. So we --

23 THE COURT: I want -- you want the Court to allow TCC
24 and the consenting professionals to support any alternative
25 restructuring. Do you still adhere to that? Again, I'll make

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1 the call --

2 MS. MITCHELL: Your Honor, I think that --

3 THE COURT: I just want to know what you and the
4 governor's --

5 MS. MITCHELL: I think the governor's point in his
6 papers is where he is. I will say that I understand the
7 concern that the victims have about the settlement being pulled
8 away from them. It has been -- notwithstanding Mr. Julian's
9 last comment. It has been the governor's -- one of the
10 governor's North Stars in this case, the victims be taken care
11 of.

12 Our concern about competition, and frankly about
13 whatever decision Your Honor makes today, is that it be made in
14 light of realizing that we have a limited amount of time in
15 this case, and if we get to a point where we determine that the
16 plan is not AB 1054 compliant and can't be made to do so with
17 the equity still being happy with where we are, we may be in a
18 position where the victims end up being impaired. We just want
19 to make sure that however this process plays out, it is played
20 out in a way that that 13.5 with the trust structures
21 ultimately will be approved by Your Honor is available for
22 victims in all scenarios.

23 THE COURT: Again, you misuse the word impaired and
24 unimpaired. They are impaired as a legal matter.

25 MS. MITCHELL: Sorry.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: So we need to focus on --

2 MS. MITCHELL: Impaired from where we stand today.

3 THE COURT: Impaired from where we stand today.

4 MS. MITCHELL: Yes.

5 THE COURT: And I assume what the governor is saying
6 is do whatever advances the ball towards getting those victims
7 paid. I think I said it in January -- or maybe it was the
8 first hearing in February, and frankly, I don't know that
9 anyone has been advocating a way to slow down the payment of
10 the victims. It's all these other things that are going on
11 about it. And certainly, the TCC has been motivated to that
12 goal primarily.

13 Okay. I gotcha, Ms. Mitchell.

14 MS. MITCHELL: Thank you, Your Honor.

15 Mr. Bray, I know you feel offended about what was
16 said. I want to focus on the issue today. So I'm going to ask
17 the debtors' counsel to respond to all the arguments we've
18 heard today, and then I guess I'll make a call to see if I need
19 to hear from anybody else.

20 And Mr. Feldman, you may want to be heard, too.

21 MR. FELDMAN: I'd like to be heard for one minute,
22 Your Honor --

23 THE COURT: Yeah.

24 MR. FELDMAN: -- on the lockup issue.

25 THE COURT: Okay. Okay. Let me do it in this way,

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1 I'll hear from Mr. Feldman. Mr. Bennett wants to be heard, and
2 then I'll hear from Mr. Karotkin or whoever wants to speak for
3 the debtor.

4 MR. FELDMAN: Your Honor, Matthew Feldman on behalf of
5 the Ad Hoc Group of Subrogation Claimants. Your Honor, I want
6 to emphasize something that I think has been lost a little bit,
7 and it goes to both the lockup issue and the timing of this
8 Court's ruling, and we have as you know been, in my opinion at
9 least, very patient about getting to today, and we are excited
10 that the Court has two RSAs in front of it, which ultimately
11 resolve the claims of both the victims, which is clearly the
12 most important, but also my group's claims as well.

13 And Your Honor is faced with a very stark decision.
14 Do you approve those settlements and count on the fact that the
15 plan will change as you've said yourself from time to time on
16 the bench to become AB 1054 compliant, or do you just simply
17 reopen the door? And contrary to what Mr. Stamer told you, if
18 you reopen the door, Your Honor, you are reopening the door to
19 both litigation as well as estimation.

20 There is a Tubbs trial set to start in the first half
21 of January --

22 THE COURT: Right.

23 MR. FELDMAN: -- that if the Court is not prepared to
24 approve, the RSAs will go forward. Once the Tubb trial goes
25 forward, you cannot put the genie back in the box.

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1 THE COURT: I know.

2 MR. FELDMAN: These are settlements. 13.5 won't be
3 13.5. Eleven won't be eleven. They'll be bigger. They'll be
4 smaller. But they will be different. The lockups, Your Honor,
5 are critical to bring everybody to the table so that we can
6 approve two RSAs; we can attempt to solve the governor's issues
7 AB 1054. We thank the governor for having come forward early
8 because if we're not able to solve the governor's issues and
9 the CPUC's issues, we will know that soon enough and other
10 opportunities will arise to figure out how to get these
11 companies out of Chapter 11.

12 THE COURT: Don't go away. Don't go away. You're
13 starting to pack up. I won't let you go.

14 So I took your -- the subro RSA under advisement a
15 couple weeks ago, and I send a signal, do you want me to
16 withhold the ruling, and I was told to wait, and then of
17 course, a lot of things happened that you know as well as I do.
18 And so my question to you is not how am I going to rule, but on
19 what -- what happens if I, in your mind, if I approve the
20 subrogation RSA and not the TCC RSA?

21 MR. FELDMAN: Yeah.

22 THE COURT: I mean, doesn't that at least still
23 lock -- pin you down and your clients and give you certainty?

24 MR. FELDMAN: Let me back up one step. When we asked
25 you to wait until last Friday to rule, it's because we knew we

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1 had a mediation session Thursday and we knew we had an open
2 issue between ourselves and the TCCs and the IPs.

3 THE COURT: Well, and I didn't know specifically, but
4 I also knew that when I announced the ruling -- and again,
5 I'm -- absolutely. You don't know what my ruling is. I know
6 what I'm going to do, but I didn't tell anybody, and so -- but
7 nevertheless, when the combination of the governor's position
8 and the letter and the deadlines and the days that happened
9 after -- well, it was a week ago Friday when the first
10 settlement was announced, right?

11 And so I'm still asking you this question: Ms. Dumas
12 made it very clear -- and I think Mr. Pitre did about what
13 happens if I just do not approve the TCC RSA, but is there an
14 adverse consequence to your clients if I approve the
15 subrogation RSA and not the TCC RSA?

16 MR. FELDMAN: The adverse consequences to the case and
17 to the extent that we view the cases being in a less positive
18 position, and we would view that as being in a much less
19 positive position, that's the adverse consequence.

20 THE COURT: But it --

21 MR. FELDMAN: It may not be an adverse consequence --

22 THE COURT: But today --

23 MR. FELDMAN: -- in terms of our recovery.

24 THE COURT: Well, okay. I want to go to the goal of
25 making us getting closer to the goal line, right? So today

PG&E Corp., Pacific Gas & Electric Co.

1 there is no TSA (sic) approved, and if I approve the
2 subrogation TSA (sic), and for whatever reason don't approve
3 the TCC, it does seem to me that that still advances the ball,
4 not as far as some would want --

5 MR. FELDMAN: Not necessarily, Your Honor.

6 THE COURT: Okay.

7 MR. FELDMAN: Let's --

8 THE COURT: I want to -- that's right. Walk me
9 through the bad --

10 MR. FELDMAN: Let's live with that hypothetical.

11 THE COURT: -- the bad side of that.

12 MR. FELDMAN: We have an approved RSA and an eleven
13 billion dollar claim payable in cash.

14 THE COURT: Correct.

15 MR. FELDMAN: Of course, the bond holders in their
16 plan don't pay us in cash, just to clear. That said, Your
17 Honor, the TCC and the individual plaintiffs now don't have a
18 deal.

19 I don't believe in playing chicken, period, with
20 judges, with victims, with anyone. And so the debtors, the
21 equity, as Mr. Pitre pointed out, they walk away from the deal.
22 The Tubbs trial is now or --

23 THE COURT: Or they don't walk away in the deal.

24 Again --

25 MR. FELDMAN: The Tubbs trial is now going forward.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: -- I don't know whether they walk away or
2 not, but they might.

3 MR. FELDMAN: I don't believe in chicken. They walk
4 away from the deal, the Tubbs trial goes forward, the IP
5 lawyers are enormously successful. Now we have an insolvent
6 company. Now I'm terminating my RSA and we're back to square
7 one and we are certainly not getting out of bankruptcy by June
8 30th.

9 A settlement is a settlement for a reason. Not
10 because it's necessarily the right number, because it takes
11 into account the risks of going forward versus the benefits of
12 going forward and people settle. Those settlements have to get
13 approved if we're going to move this case forward.

14 If we're going to litigate, we should all go litigate
15 and we can talk in a year as to what we should do.

16 THE COURT: Okay, same question.

17 MR. FELDMAN: And the lockup is a critical
18 component --

19 THE COURT: Well, that was the second --

20 MR. FELDMAN: -- to it.

21 THE COURT: -- question, and a long time ago, sometime
22 earlier today, before or after Donato, I can't remember which,
23 I asked --

24 MR. FELDMAN: PD and PD, we call it.

25 THE COURT: I --

PG&E Corp., Pacific Gas & Electric Co.

1 MR. FELDMAN: Pre Donato, Post Donato.

2 THE COURT: I think -- yeah, I've been told more than
3 once that Judge Donato gets quickly to the point and here I am
4 in my fifth hour on this hearing. I should do it his way and
5 be done in twelve minutes, right?

6 Why is the lockup so important to your group, your
7 deal? As I said, observe, there are a hundred insurance
8 companies; who cares? How can the lockup make a difference
9 either way?

10 MR. FELDMAN: 110 insurance companies, Your Honor.

11 THE COURT: All right, 110.

12 MR. FELDMAN: Look. We believe, and we believe
13 correctly, that we got the best deal we could get as part of an
14 integrated deal that included a lockup. But we also think the
15 lockup is the right thing to do for the company and for its
16 emergence and for its ability to concentrate on AB 1054. This
17 is the most important component.

18 You want to talk about competition; the competition is
19 not between a bond holder plan and a company plan. The
20 competition is between the company plan and the governor in
21 terms of how do you satisfy that.

22 And frankly, I don't want to revisit history as to how
23 we got our deal and how the TCC got the 13.5 billion.

24 THE COURT: No. I don't want you to.

25 MR. FELDMAN: But it wasn't based on competing plans.

PG&E Corp., Pacific Gas & Electric Co.

1 It was based on people making first moves, and first moves
2 include lockups. This is a very ordinary course event, Your
3 Honor --

4 THE COURT: No, everybody --

5 MR. FELDMAN: -- for a Chapter 11 case that you're
6 struggling over.

7 THE COURT: Mr. Feldman, the people in your end of the
8 country must think those of us out here in California only get
9 Chapter 11s when PG&E files every thirteen years.

10 MR. FELDMAN: Absolutely not, Your Honor. That's
11 neither true nor fair.

12 THE COURT: But some of your colleagues have said
13 they're very common, and I believe one of the colloquies we
14 had -- it might have been with Mr. Karotkin; I don't remember
15 which lawyer -- was well, but it might be different if
16 exclusivity is broken because one of our phenomena out here is
17 frequently, exclusivity gets broken. So I think the
18 question -- the significance of a lockup changes dramatically
19 if you break exclusivity, so I broke exclusivity for a reason,
20 and now I'm being asked to enforce the lockup for a reason. I
21 just need to have a better appreciation for the ramifications
22 of it.

23 And I want you to know, and everybody in the room to
24 know, I'm making the decision up or down on each of these two
25 motions on the merits, not on -- just because I like lockups or

PG&E Corp., Pacific Gas & Electric Co.

1 don't like them. So the point is that I still don't quite know
2 why a lockup makes a big difference to your clients, and so
3 that's really what I'm struggling with.

4 MR. FELDMAN: You know, there's a reason -- and I
5 apologize, I'm going to go a little bit off topic to prove the
6 point.

7 There's a reason that debtor in possession financing
8 is not done through a competitive process. A debtor is
9 entitled to pick who its lender should be. Parties under plans
10 should be able to pick which group they want to lock up to.
11 That's just sort of fundamental, so that you can build trust,
12 you can work together.

13 This plan is going to be amended. There's very little
14 doubt in my mind and the willingness of my group to be at the
15 table and participating in that is based on them being tied to
16 one or the other group. In this circumstance, we've chosen to
17 be tied to the company equity plan, but not all plans are
18 created equal, Your Honor.

19 THE COURT: Okay, got it. Thank you, Mr. Feldman.

20 MR. FELDMAN: Thank you.

21 THE COURT: Mr. Bennett?

22 MS. DUMAS: Just one moment, sir. I appreciate it.
23 Your Honor, Cecily Dumas, just one clarification.

24 Your Honor asked Mr. Feldman what happens if the subro
25 RSA is approved and the TCC RSA is not approved. I'll just add

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1 the point that the TCC has an outstanding objection to the
2 subro RSA which would not be withdrawn. It will be withdrawn
3 if they're both approved.

4 So I don't want to go back into the history of the
5 case by case made-whole rule and all that, but that is part
6 of --

7 THE COURT: I feel like we're playing --

8 MS. DUMAS: -- our deal.

9 THE COURT: -- we're playing chess and --

10 MS. DUMAS: Yeah, I just --

11 THE COURT: Which hand do you want to pick? You want
12 to take this one or this one?

13 MS. DUMAS: I know, I just thought that -- I didn't
14 want that to slip everyone's mind. Thank you, Your Honor.

15 THE COURT: Mr. Bennett?

16 MR. BENNETT: I'll try to be brief, Your Honor. In
17 one respect I want to repeat something that was said earlier
18 because I think it's important and it tends to get lost in a
19 hearing this long, and it's where Mr. Karotkin started the
20 hearing, which is that what you have before you today, between
21 the two RSAs, plus the RSA that you didn't see which is the
22 municipal claimants' RSA, you have an opportunity that is
23 supported by all impaired classes to take a big step forward to
24 resolve these Chapter 11 cases.

25 I have to say that I'm not sure I ever thought this

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1 would be possible, and we have the extraordinary situation
2 where the principal objectors to the terms and conditions that
3 the actual parties negotiated are all creditors who are
4 unimpaired.

5 And frankly, in a case where everyone acknowledges,
6 for the time being, that it is solvent, the unimpaired
7 creditors should not be the loudest voice; they should not be a
8 loud voice at all.

9 They in fact, as Your Honor noted, have rights that
10 will be determined in the context of a confirmation hearing or
11 these hearings that you've set up in advance of confirmation to
12 give them some space, which I think was a great idea.

13 THE COURT: But I think you've proved --

14 MR. BENNETT: And so that's a --

15 THE COURT: Wait a minute, I think you proved too
16 much, because they're unimpaired when the plan's confirmed.
17 They're not unimpaired before the plan is confirmed; they're
18 being asked to weigh in on what is essentially a transaction
19 that is not a plan confirmation. It's a step earlier, like --

20 MR. BENNETT: It's --

21 THE COURT: -- like if a debtor was selling Blackacre,
22 could a creditor say, I can't object because I'm going to be
23 unimpaired and under the plan? That's not right.

24 MR. BENNETT: That's not quite true, Your Honor. One
25 of the things that happened in this case, which was also

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1 unusual -- and again, it was basically an insistence by the
2 Elliott-led bondholder group -- was the idea that no plan was
3 credible without financing. And so what you have, Your Honor,
4 behind this plan -- it's not like the ordinary case where you
5 just have a plan and maybe you're going to get to the end and
6 maybe you're not. Maybe the money is going to be there and
7 maybe you're not. I know you've been in cases where the money
8 didn't show up. I've been in cases where the money didn't show
9 up.

10 Here you have commitments, 12 billion to be precise,
11 and you've got a hearing set, which I continued because of
12 discovery things, so it's not -- it didn't necessarily
13 happen --

14 THE COURT: Right, right.

15 MR. BENNETT: -- to happen this way.

16 THE COURT: I know, I know.

17 MR. BENNETT: But that's a matter of weeks away. So
18 your principal outstanding issue is the negotiations with the
19 governor and the CPUC concerning 1054.

20 You've heard that there are constructive negotiations
21 with respect to that, and Your Honor's point that if it blows
22 up, there are exit ramps because none of these things are
23 performable, I think is accurate.

24 But I want to come back to my first point. Let's
25 remember where we are in the map. Okay, in all of the

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1 interesting discussions about the intricacies of what are
2 called lockups -- and we're going to talk in a second as to
3 whether that's what they really are. Whatever we want to call
4 them, lockups, we have to remember where we are.

5 We are -- every impaired constituency in this case
6 prepared to agree to the same plan structure; almost
7 unimaginable that we would be talking about this in the year
8 2019. That's number one.

9 Number two, there's kind of an idea that's been
10 floating around the courtroom. When we go back into
11 transcript, we're going to see it almost in these words. That
12 the RSA that was negotiated is a claim settlement and a lockup.
13 And of course, that's actually an oversimplification. The way
14 that this document works is that the parties agree to certain
15 things upfront and then they do more and more things together.

16 The allowance of the claim only happens after a motion
17 is filed after the disclosure statement is approved, and only
18 happens at a hearing that gets commenced at the confirmation
19 hearing.

20 THE COURT: You're talking about the thing that I
21 asked Mr. Karotkin about earlier today?

22 MR. BENNETT: Yes, yes.

23 THE COURT: But he also said it was almost a
24 formality.

25 MR. BENNETT: Well, I think what he meant was, is that

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1 by the time we get there, it should be almost a formality
2 because the votes will already be in. The idea, Your Honor, is
3 to make it a formality. The way it becomes a formality is that
4 the process that is built -- and if Your Honor wants the exact
5 references --

6 THE COURT: No, I have them. I have it right here.

7 MR. BENNETT: The deadline for filing is in one place.
8 The deadline for filing is in 3(ii), but the process for
9 getting the estimation approval done is in 2E.

10 And so that's the way it was designed. It was that
11 the parties would be working together, and they would get to
12 the finish line together and wouldn't make commitments to each
13 other earlier --

14 THE COURT: But I think you misstated your own
15 agreement, because this little paragraph, E -- 2E says the
16 debtors will file the estimation approval motion within three
17 days after approval of the disclosure statement.

18 MR. BENNETT: Correct.

19 THE COURT: But you also said the votes will already
20 be in.

21 MR. BENNETT: No, no, keep going.

22 THE COURT: But they won't be in if the disclosure
23 statement has just been approved.

24 MR. BENNETT: Keep reading.

25 THE COURT: Yeah, keep reading.

PG&E Corp., Pacific Gas & Electric Co.

1 MR. BENNETT: And the estimation approval motion shall
2 be heard at or before the beginning of the confirmation
3 hearing.

4 THE COURT: At or before the beginning, so --

5 MR. BENNETT: Right, the --

6 THE COURT: -- it's not clear when it's heard.

7 MR. BENNETT: I think the idea, Your Honor, is that
8 the commitment by the debtors to actually get it heard will be
9 dependent upon everything happening the way it's supposed to
10 happen.

11 THE COURT: Yeah, but we're back to whether it's a
12 formality or not. There won't be an estimation hearing if they
13 don't have the votes, and if they do have the votes, what is
14 there to have a discussion about?

15 MR. BENNETT: I think that's the --

16 THE COURT: But there's nothing to it, unless somebody
17 wants to recount the ballots, like they do in other parts of
18 the country.

19 MR. BENNETT: Well, the estimation will be necessary
20 to protect the plan and to protect the trust. But yes, Your
21 Honor, the intention is that by the time you get there, it is a
22 formality. That's the intention; that's what is designed to
23 occur.

24 THE COURT: I guess I don't see how it's important,
25 but I'm not going to second guess you on that. The point is,

PG&E Corp., Pacific Gas & Electric Co.

1 it's a process that has to happen, but what does that have to
2 do with the lockup question?

3 MR. BENNETT: What I'm saying is the agreements in
4 this document, all of the agreements are in fact integrated
5 with each other.

6 THE COURT: Yeah.

7 MR. BENNETT: They've not severable, separate things.

8 THE COURT: That's clear.

9 MR. BENNETT: And they were designed intentionally to
10 be that way. It's not fair to describe it as a document that
11 includes a 9019 settlement and a lockup; it is a document that
12 includes many things that work together over time --

13 THE COURT: Mr. Bennett, come on; I wasn't born
14 yesterday. It's a complicated document, but if there's one
15 thing wrong with it, I can say I'm not going to approve it.

16 MR. BENNETT: No, I --

17 THE COURT: And so I --

18 MR. BENNETT: No, I don't doubt --

19 THE COURT: Okay.

20 MR. BENNETT: I don't doubt that.

21 THE COURT: Okay.

22 MR. BENNETT: I just wanted to make sure it was fairly
23 described.

24 THE COURT: Well --

25 MR. BENNETT: You absolutely --

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: It's very difficult and complex, but it's
2 well described, yes. It just takes a lot of time and a lot of
3 counting on your fingers and a lot of cross references, but
4 it's --

5 MR. BENNETT: Okay.

6 THE COURT: It is what it is, and I understand it.

7 MR. BENNETT: All right. My next point really is
8 about things that people don't really disagree about, and one
9 of them is that there was an extensive mediation. More than
10 six full days I'm remembering, and lots of meetings that
11 occurred in between. The participants to the mediation, Your
12 Honor, included the bondholders. So the bondholders said
13 something, but no one was listening to them, they didn't talk
14 to people; people didn't hear what they had to say.

15 UNIDENTIFIED SPEAKER: Your Honor, this is completely
16 inappropriate for him to be --

17 THE COURT: Yeah.

18 UNIDENTIFIED SPEAKER: -- referencing what went on
19 with respect to the meeting.

20 THE COURT: It is, I agree.

21 MR. BENNETT: I'm going to respect -- just what
22 everybody else did.

23 THE COURT: But don't talk about what happened; it's
24 not relevant.

25 MR. BENNETT: I'm just saying they were there, period.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: There was a mediation; leave it at that.

2 UNIDENTIFIED SPEAKER: Well, just to be clear, to the
3 extent we were there, we were there for very limited parts of
4 it.

5 THE COURT: Okay.

6 UNIDENTIFIED SPEAKER: Not by our volition or
7 decision.

8 THE COURT: Mr. Bennett, yes, go on to the next
9 subject.

10 MR. BENNETT: Okay, I will assume then that he
11 excluded the mediation when he made that representation.

12 THE COURT: I -- Mr. Bennett, move to the next
13 subject, please.

14 MR. BENNETT: Okay. The process of generating the
15 RSA -- this one and the subrogation one -- were extensive
16 negotiations with lots of very well represented people. People
17 worked really hard; they made hard decisions. That's why you
18 have deals.

19 Your Honor, it was also said that for some reason that
20 it should matter that the equity holders were involved in
21 discussions. We certainly were. Everyone in this case says
22 it's a solvent case, including the people who are claiming vast
23 amounts of post-petition interest. In such a case, equity
24 clearly has a voice. And I want to repeat something that Mr.
25 Feldman said, because it's exactly right.

PG&E Corp., Pacific Gas & Electric Co.

1 The RSAs that have been presented here are utterly
2 conventional. In fact, in a lot of ways, they're softer, they
3 accord more flexibility to parties, they have more exit ramps
4 than most RSAs that you see in the commercial world. And so,
5 Your Honor, we believe that the combination of both RSAs -- and
6 we kind of think they go together, just like the committee
7 does, but I suppose we support either or both. They form a
8 great foundation for moving forward in this case. They don't
9 ask unreasonable things of anybody and they ought to be
10 approved.

11 THE COURT: Okay, thank you. Mr. Karotkin, do you
12 want to close?

13 MR. KAROTKIN: Yes, Your Honor, I'll close. I assume
14 there will -- if other people -- if you're going to let other
15 people make comments, I'd like to wait until they are finished,
16 but if I'm closing --

17 THE COURT: Mr. Stamer, do you want to be heard
18 anymore? I'm not -- I'm really going to close the discussion
19 under the principal players, so I'll --

20 MR. STAMER: Your Honor, how could I turn down an
21 opportunity?

22 THE COURT: Well, you can pretend I'm Judge --

23 MR. STAMER: Donato?

24 THE COURT: -- Donato, and the --

25 MR. STAMER: Actually, that's a perfect segue to --

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: -- hearing's already over with.

2 MR. STAMER: -- to where I want to start. Again for
3 the record, Mike Stamer from Akin Gump for the ad hoc senior
4 noteholder committee.

5 Your Honor, we filed twenty minutes ago a copy of the
6 twelve-page transcript from Judge Donato's hearing earlier
7 today. I could stand up here and read you really good
8 snippets. It's twelve pages. We would ask that it be part of
9 the record and that the Court, before you render your decision,
10 please consider the transcript.

11 Your Honor --

12 THE COURT: You've got to understand. It's not that I
13 can't go read twelve pages. It's very almost unprecedented.
14 There's another judicial officer presiding over another phase
15 of this case, and as far as I know, it was a status conference.
16 So whatever he said is what he said. It's important what he
17 said, but I don't know why it's relevant for my decision. It
18 can be relevant for the record, but not --

19 MR. STAMER: Your Honor, it --

20 THE COURT: -- the decision. He may be an article
21 from a district judge, but I'm not --

22 MR. STAMER: I --

23 THE COURT: -- bound by his ruling.

24 MR. STAMER: I understand the point. I think it's
25 relevant to your decision, because Your Honor had asked on

PG&E Corp., Pacific Gas & Electric Co.

1 several occasions what happens if you decide that the lockup
2 provisions, the anticompetitive stuff, should be taken out.
3 This shows you at least the mindset, based upon a status
4 conference, as to exactly where Judge Donato is and what would
5 likely occur if, in fact, this were to fall down and we were to
6 head back out to estimation as it relates to the tort claims.

7 Your Honor, I --

8 THE COURT: So you want me to glean from that --

9 MR. STAMER: Yeah.

10 THE COURT: -- whether I read it or not is that in
11 these twelve pages Judge Donato made a statement that you
12 believe means he's made up his mind that there's a thirteen-
13 and-a-half-billion-dollar estimation in place.

14 MR. STAMER: Would you like me to read a short
15 excerpt?

16 THE COURT: Well, no. I want you to know whether Mr.
17 Feldman and Mr. Bennett and Mr. Karotkin all signed up and
18 said, yeah, we agree to all that --

19 MR. STAMER: No, Your Honor, that's why we --

20 THE COURT: -- because I don't imagine they did.

21 MR. STAMER: -- filed it on the docket. It's docket
22 number 5154. Your Honor, again, what we're dealing with here
23 is probability -- is there's no certainty in life, but this
24 should be factored into how you view upside, downside, and the
25 importance of moving forward in our view with a competitive

PG&E Corp., Pacific Gas & Electric Co.

1 process.

2 So I'm going to jump around a little bit, and I won't
3 take too much time.

4 THE COURT: Okay.

5 MR. STAMER: First of all, Your Honor, Ms. Dumas said
6 very eloquently, we wish we had more cash; we wish we had more
7 cash for the benefit of the tort claims. Your Honor, if the
8 torts want more cash, our plan as it exists proposes more cash.
9 But if they want more cash, it should be a competitive process.
10 The most likely outcome in terms of getting more cash to the
11 torts and getting higher value to the torts is a competitive
12 process.

13 Your Honor, Ms. Dumas went through her thought
14 process, as did Mr. Pitre, with respect to why, in fact,
15 they've agreed to this settlement. And they talked about
16 certainty and the ability of people to object and delay. Your
17 Honor, there's no indication in the record or otherwise that
18 the TCC ad hoc plan has a lesser likelihood of being confirmed
19 of satisfying 1054. They made their decision. I was genuinely
20 surprised to hear someone stand up and disagree with my number,
21 that our proposal to the torts is a billion dollar more. Your
22 Honor, I stand by my statement, and if we need to submit
23 additional information for the Court, we're happy to do so.

24 Your Honor, everyone has seen the letter. I think
25 you've received four or five copies of the judge's letter.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: You mean the governor's letter?

2 MR. STAMER: The governor's letter. The governor has
3 outlined fifteen -- whatever the problems are with the debtor's
4 plan. We're referenced in a footnote. It says our plan is in
5 AB 1054 compliant. But Your Honor, our plan for so many
6 reasons is a better plan. It's a better plan for the state of
7 California. It's a better plan for the creditors. It's a
8 better plan for the torts. It preserves NOLs. There's less
9 leverage. There's more money to be invested to harden the
10 system. I can go on and on.

11 THE COURT: You don't need to. I mean --

12 MR. STAMER: No, I --

13 THE COURT: -- you made the point on your paper.

14 MR. STAMER: Again, I'm just trying to, again, lay the
15 background. The reason why the equity is insisting upon a
16 lockup is because they can't compete. They can't compete --
17 Ms. Dumas said, apples to apples; they're different. She's
18 right. They are different. The fundamental linchpin of the
19 equity plan is the fact that they need to preserve -- pick a
20 number, five, six, seven billion dollars of equity value. We
21 don't. We think whatever equity value is there we have settled
22 with the torts, and we've given basically all the equity value
23 there. So fundamentally, they need the lockup, because their
24 plan inherently is inferior.

25 THE COURT: Oh, I understand the ramifications and the

PG&E Corp., Pacific Gas & Electric Co.

1 consequences.

2 MR. STAMER: And Your Honor, again, with the lockup,
3 when I say "they need the lockup," only the equity needs the
4 lockup. The debtor doesn't need the lockup. The debtor should
5 be -- as I said before, this should be an open and competitive
6 process. It benefits --

7 THE COURT: But --

8 MR. STAMER: -- everyone.

9 THE COURT: -- listen. One of the things that I think
10 Mr. Bennett made a comment at a prior hearing, not today but
11 earlier, where do unimpaired creditors, parties -- and even
12 though I'm the one that said they're not unimpaired until
13 there's a plan. But if we were confirming the debtor's plan
14 today, your client's unimpaired, where do you get off in
15 saying, I've got a better deal for you? The law doesn't permit
16 that, does it?

17 MR. STAMER: Your Honor, I think you actually answered
18 it --

19 THE COURT: Well, no, but the law might say to a voter
20 in an impaired class that there's a better deal out there for
21 you, and the only question here is whether individual people
22 and individual representatives can lobby one way or the other.
23 But you're not prohibited and your client's not prohibited from
24 trying to sell their plan to the voters. It's like somebody
25 running for office.

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1 MR. STAMER: Actually, the --

2 THE COURT: The guy running for office --

3 MR. STAMER: No, I --

4 THE COURT: -- I didn't have enough money to get on
5 the national debate, but I can tell you I'm the better
6 candidate.

7 MR. STAMER: Two things, Your Honor. One, the lockup
8 I believe as drafted would prevent us from doing just that.

9 THE COURT: Well, how would --

10 MR. STAMER: Would prevent us from negotiating with
11 the subros, would --

12 THE COURT: How about selling your plan to the voters?

13 MR. STAMER: Selling, well --

14 THE COURT: Convincing the individuals --

15 MR. STAMER: Yeah.

16 THE COURT: -- the people in the impaired class, the
17 victims -- how about convincing the victims that your plan is
18 better for them? Why --

19 MR. STAMER: And --

20 THE COURT: Who says you can't do that?

21 MR. STAMER: And Your Honor, if there's a level
22 playing field after this is --

23 THE COURT: Mr. Stamer, can you answer --

24 MR. STAMER: Yeah.

25 THE COURT: -- my question? If we come to a point

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1 where the debtor's plan and more importantly disclosure
2 statement is inconsiderate and so is yours and I approve both
3 disclosure statements and maybe Mr. Karotkin and his colleagues
4 can't do anything to speak against your plan, but you and your
5 clients can lobby in favor of your plan to the voters, right?

6 MR. STAMER: Your Honor, we --

7 THE COURT: What's wrong with that?

8 MR. STAMER: We absolutely can, and --

9 THE COURT: Okay.

10 MR. STAMER: -- by approving the lockup, you would be
11 requiring us to convince individual tort claimants that we know
12 better than their lawyers. Regardless of whether we do or
13 not --

14 THE COURT: Make a more convincing argument for them
15 to make the vote. That's simple dollars and cents.

16 MR. STAMER: Your Honor, again, as you had raised
17 before -- someone has raised before the vast majority of the
18 70,000 claimants have never done this before, hopefully will
19 never do this again.

20 THE COURT: Right.

21 MR. STAMER: We can do a broad solicitation. What we
22 would ask, Your Honor, is to allow the process to continue. In
23 response to your question about impairment, Your Honor, if we
24 were standing here on the effective date of the plan, or even
25 at the confirmation hearing, and they had long-term financing

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1 lined up, which they don't have. They have twelve billion
2 dollars of equity, and they've got commitments for a --

3 THE COURT: I know, and you can make --

4 MR. STAMER: -- twelve-month bridge, which the CPUC's
5 never going to approve.

6 THE COURT: And you can make an argument that the plan
7 is not feasible. You have a right to object that the plan's
8 not feasible.

9 MR. STAMER: Your Honor, at that point it's too late.
10 The problem with that is, if you get into March -- February,
11 March, whenever it happens, the company needs to confirm a plan
12 by --

13 THE COURT: I know that.

14 MR. STAMER: -- by June.

15 THE COURT: I know when it has to confirm the plan.
16 Okay. I --

17 MR. STAMER: Your Honor, if they get AB 1054 approval,
18 if they get long-term financing, if they jump through the
19 twenty hoops that the governor has asked them and the CUPC will
20 ask them to jump through, if at the end of the day all of this
21 happens, are we potentially -- and we lose on all of our
22 litigation with respect to interest and make whole and the
23 like. If all that happens, we'll have nothing to say. Our
24 problem is, as Your Honor said it, we are not unimpaired --
25 double negative -- we are not unimpaired unless things go

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1 wrong, and the only indication we have as to whether this is
2 going to go right or wrong is the governor's letter of December
3 13th, which says --

4 THE COURT: I know.

5 MR. STAMER: -- they're not compliant. The plan's
6 not --

7 THE COURT: But again, we're --

8 MR. STAMER: -- confirmed.

9 THE COURT: -- going around in circles, Mr. Stamer.
10 My issue is the following. I'll state it again. If your
11 opponent files a plan that's patently unconfirmable, you have a
12 right to object to that plan, and I have publicly and in the
13 prior PG&E case have been affirmed by disapproving a disclosure
14 statement for a plan that's unconfirmable. So there are ways
15 to attack the matter head on, and we don't -- and so we're
16 still back to the question, do I issue an order that approves
17 this RSA and has people like Mr. Pitre and his colleagues that
18 said you guys can't say anything bad about the other plan. I
19 mean, it's not really like a gag order, but it's effectively a
20 gag order. And not a question of who can negotiate with whom,
21 but who communicates with the voters, and the voters are the
22 critical people in my opinion. And I'll grant you there is
23 some ramification there, but with an adequate approved
24 disclosure statement, you have the ability to solicit those
25 votes just like anybody else. And the best result obviously,

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1 from my point of view, would be to get both plans accepted on
2 the requisites, and then we come down to the -- you know what
3 follows after that.

4 MR. STAMER: Yeah, yeah.

5 THE COURT: Anyway, I think all this point about what
6 the governor's letter says and what all the hoops that PG&E has
7 to jump through, your client will be well served if they
8 stumble on the first hoop. But at the moment they haven't, and
9 so they have in fact the reverse from what the debtors' counsel
10 and the TCC's counsel have made the point today that the RSAs
11 are steps forward, even with the integrated provisional lockup.
12 Anyway --

13 MR. STAMER: Your Honor --

14 THE COURT: -- we're going around --

15 MR. STAMER: -- our humble belief is the governor's
16 letter is the ultimate stumble, because that's the linchpin to
17 this company getting out, and all we're asking for is to avoid
18 a potential train wreck and leave people where it's too late
19 and too little in order for us to pick up the pieces.

20 THE COURT: I understand.

21 MR. STAMER: Okay.

22 THE COURT: Okay.

23 MR. STAMER: Thank you.

24 THE COURT: Mr. Karotkin, I'm going to hear from
25 you -- or Mr. Orsini, one of -- are you both going to do it,

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1 or --

2 MR. KAROTKIN: Well, we'll be very short.

3 THE COURT: Does that mean you're both going to talk?

4 MR. KAROTKIN: Yes, sir.

5 MR. ORSINI: I'm getting homework assignments from
6 everywhere today, Your Honor.

7 THE COURT: Okay. Mr. Orsini --

8 MR. ORSINI: I will be short.

9 THE COURT: -- I want you to recite verbatim the
10 twelve lines -- the twelves work pages that Judge Donato
11 stated.

12 MR. ORSINI: I don't need to, Your Honor. We were
13 upstairs, as you noted, for a status conference on the question
14 of, what do we do with estimation right now. Judge Donato did
15 make some observations about, well, might this number not be a
16 number I can use if the deal falls apart, and the answer is --
17 I want to be very clear on two things. Number one, what he
18 didn't have in front of him was this settlement agreement, the
19 RSA itself, which explicitly says in Section 18 that the RSA,
20 just like most settlement agreements, cannot be used as any
21 sort of admission by either side as to what the right number is
22 for these claims if you don't approve this RSA and if we're
23 back in estimation. So the document itself will establish that
24 you can't just use a thirteen and a half number, point number
25 one.

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1 Point number two -- and I think Mr. Pitre made this
2 point, and I just want to amplify it -- if we don't have an RSA
3 approved here, it's not a simple matter of just allowing Judge
4 Donato to rubber-stamp a 13.5, because the first thing that Mr.
5 Pitre and I are going to do is walk down the street and battle
6 for two and a half months in front of a jury as to what happens
7 with the Tubbs liability. If he wins, the estimation will look
8 one way. If I win, the estimation will look --

9 THE COURT: No, I know. We've --

10 MR. ORSINI: -- another way. And on top --

11 THE COURT: -- known that all --

12 MR. ORSINI: -- of all that --

13 THE COURT: We've known --

14 MR. ORSINI: -- Your Honor --

15 THE COURT: We've known that all.

16 MR. ORSINI: -- to be very clear, if we're back in the
17 estimation, I'm going to be putting in expert reports that are
18 extensively analyzed, documented, and will be proven up that
19 say the number is not 13.5, even if Mr. Pitre beats me. The
20 only point is, Your Honor, I understand the bond holders are
21 trying to keep their piece alive, and they're trying to seize
22 upon a musing during a status conference that maybe we'll just
23 use the 13.5. That is not what's going to happen. It's not
24 what the document says is going to happen and ignores the
25 reality of everything that will happen from tomorrow forward if

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1 this RSA's not approved, and I just wanted to rise to make that
2 point clear.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Orsini.

5 Mr. Karotkin?

6 MR. KAROTKIN: Thank you, Your Honor. Stephen
7 Karotkin, Weil, Gotshal & Manges for the debtors. I will try
8 to be fairly brief.

9 THE COURT: That's what they all say.

10 MR. KAROTKIN: No, I --

11 THE COURT: You can do it, too.

12 MR. KAROTKIN: I will. It's getting late, and people
13 are getting tired.

14 A couple of things that Mr. Stamer said. He said the
15 debtors continue to breach their fiduciary duties. He said
16 that a number of times before Your Honor, and I'll ask the
17 question, Your Honor: What is inappropriate for a debtor? And
18 Mr. Bennett alluded to it. A debtor, where everyone in this
19 courtroom acknowledges that it's the sovereign debtor, what is
20 inappropriate about the debtor coming to this Court with a
21 global consensus among all impaired classes that it wants to
22 move forward with and protect all of the economic stakeholders
23 who have an economic interest in this case? What is wrong with
24 that? And he said -- Mr. Stamer said, but we're threatening
25 and the equity is threatening the tort lawyers and the TCC.

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1 Your Honor, I think Ms. Dumas and the tort lawyers can
2 assure you nobody was threatened and nobody forced them to
3 enter into an agreement, which they have made very clear today,
4 Your Honor, they believe is in the best interest of their
5 clients for a number of reasons, including they believe it is
6 the most expeditious way to get these cases successfully
7 completed, to get the debtors out of Chapter 11, to fund a
8 trust, and to get payments to their clients, and that's a
9 rational and reasonable decision. And as Mr. Pitre said and as
10 Mr. Orsini just mentioned, the lockup was key to this
11 negotiation. It was key to getting a consensus among all of
12 the parties, and without that lockup, the thirteen and a half
13 billion vaporizes. And Mr. Feldman's agreement to the eleven
14 billion dollars will vaporize as well, and we will be back in
15 extensive estimation proceedings.

16 And if I may continue, as everyone has acknowledged,
17 what we have here is the RSA and the compromises provided in
18 the RSA constitute a comprehensive settlement that resolve a
19 number of issues, including claims treatment of all impaired
20 classes. It resolves the estimation proceedings before Judge
21 Donato, and it resolves the Tubbs trial. It is based not only
22 on the treatment of the tort claimants or on the treatment of
23 the subrogation claimants, but it's based on the treatment of
24 all constituencies in this case. And eliminating one element
25 of it would cause the whole thing to fall apart. It would

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1 undermine the negotiation, the balance that was achieved
2 through the negotiation, and the willingness of the parties to
3 compromise and give up rights. They gave up rights only with
4 the certainty that they would achieve the deal they negotiated.
5 And without the lockup, there is no certainty that they will
6 get the deal they negotiated, and that is the reason, Your
7 Honor, that all RSAs have lockups. This is nothing new. It
8 doesn't matter that exclusivity was terminated. I know you
9 raised this issue last time, and as I said last time, RSAs
10 don't make any sense. They contemplate that exclusivity will
11 be terminated. Otherwise, the provisions don't mean anything.
12 They contemplate that occurring, and that is why they have the
13 lockup provisions. The --

14 THE COURT: But they sometimes get in place, even when
15 they're hasn't been a termination of exclusivity, right?

16 MR. KAROTKIN: But --

17 THE COURT: And then --

18 MR. KAROTKIN: But they anticipate -- they're
19 anticipating --

20 THE COURT: Yeah, I understand that --

21 MR. KAROTKIN: -- that eventuality --

22 THE COURT: I --

23 MR. KAROTKIN: -- otherwise the provisions would be
24 meaningless.

25 THE COURT: I understand.

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1 MR. KAROTKIN: So what we have here, Your Honor -- we
2 have -- they complain about the competition, and they assert
3 that we need to have competition. And that's really the thrust
4 of what the creditors' committee has said, what the thrust of
5 the last sentence in the governor's letter says, what the
6 thrust of the ad hocs say. Well, as I said before, we have had
7 the competition. You appointed the mediator. That was the
8 competition, and the result of the competition is the
9 comprehensive settlement that we have achieved. As I said at
10 the outset, we have achieved precisely what you asked us to
11 achieve, a settlement among all impaired classes.
12 Sophisticated parties agreed that and have called as to how
13 they think these cases should proceed from now until
14 confirmation, including, Your Honor, the TCC who, in your
15 words, are fiduciaries for, and I quote what you said in your
16 decision to terminate exclusivity: the parties most deserving
17 of consideration. These parties have agreed to this global
18 consensus. They have agreed to the lockup. They believe it's
19 appropriate, and they believe, as they've said, that this is
20 the way to get these cases done. And they are confident, as I
21 said earlier, Your Honor, that the debtors' plan will fully
22 comply with AB 1054, will timely be confirmed, and will get the
23 benefits of the go forward wildfire fund.

24 This compromising global resolution, Your Honor, as
25 you know, is the essence of Chapter 11. And there's no reason

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1 why the debtors' business judgment, the business judgment of
2 the tort claimants committee, the business judgment of the
3 other parties who are party to the RSA should be questioned,
4 particularly when they have fiduciary duties -- the tort
5 committee has fiduciary duties to the in excess of 70,000
6 claimants who filed claims in these cases.

7 That shouldn't be second guessed -- much less, Your
8 Honor, second guessed by parties whose claims will be
9 unimpaired and satisfied in full under the debtors' plan.

10 Your Honor, we are at a critical crossroads in these
11 cases. We have brought to you a comprehensive settlement. We
12 think the path is clear. We think it is imperative that you
13 approve that settlement today. To jettison that settlement
14 would put us back in a litigation morass, back in estimation,
15 the subrogation claims settlement in the amount of eleven
16 billion dollars.

17 As Mr. Feldman assured you, they will be seeking
18 twenty billion dollars of claims. And I can assure you, if
19 that scenario unfolds, we will never meet the June 30th
20 deadline, and the thirteen and a half billion dollars for the
21 tort claimants will not be there.

22 And we urge you to approve the motion.

23 THE COURT: Okay. Thank you Mr. Karotkin.

24 Just give me a moment, please.

25 If those of you are getting hot, you think it's

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1 because the intensity of the argument; it's because GSA has a
2 little deterrent called turn the fan off around here, so I have
3 no control over that.

4 I have obviously spent a lot of time on this, and all
5 of you have spent a lot of time on it. And one of the things
6 that I thought I would do is take a lot of time to give you a
7 long drawn out ruling, but I'm not going to do that. I'm going
8 to go ahead and give you an oral ruling right now on both
9 motions. And just bear with me while I make sure I keep my
10 thoughts in order.

11 But so there's no surprises, I'm going approve both
12 RSAs with the lockup language. But I will explain myself.

13 For both of them -- and so I have kept the subrogation
14 RSA under advisement for a couple of weeks, for reasons that I
15 touched on earlier. And if nothing had happened -- if Judge
16 Newsome and the parties who met with him in the prior weeks
17 hadn't reached the resolution that they reached, and if the
18 governor hadn't written his letter, and if the company hadn't
19 filed what it filed yesterday -- but Mr. Feldman -- or Mr.
20 Karotkin said give me the ruling on the RSA, I would have given
21 it the way I've been thinking about it. And I'm -- so
22 therefore, to some extent, this is all been thought through as
23 I've gone through it.

24 However, in the events of the past few days, the way
25 things have changed so dramatically, I've had to take into

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1 account all these -- the very things that many of the able
2 lawyers have explained and argued today.

3 So to some extent, I'm going to address a couple of
4 issues that really didn't spend a lot of time -- we didn't
5 spend a lot of time on today. But the first one, particularly,
6 it was focused in the subrogation RSA, had to do with the
7 third-party releases. And to the extent that the third-party
8 releases showed up in the TCC RSA, the points are the same.
9 And that is that the United States Trustee, and certainly
10 previously when the TCC was opposing the subrogation RSA, we
11 had the colloquy for some length about that subject.

12 And I'm not going to bore you all at this hour with
13 reciting a whole bunch of cases. But the fact is, in the 9th
14 circuit, where we are governed, there are at least three
15 seminal decisions -- I guess you can't have multiple seminal
16 decisions. There are three circuit decisions: Lowenschuss,
17 Underhill v. Royal, and American Hardwoods, that clearly, over
18 and over and over again, send the signal to the bankruptcy
19 courts, in this circuit at least, that you can't do third-party
20 releases.

21 I note for the lawyers who spend a lot of time in
22 Delaware, that just in the last few weeks there's been a
23 difference of opinion among the Delaware judges about third-
24 party releases -- interesting reading, which I spent.

25 But the cases are many in our circuit. Rohnert Park

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1 Auto Parts back in 1990; In re Keller in 1993, the same concept
2 that carried over. And I think Underhill v. Royal was the true
3 seminal one in that point.

4 And I think at the outset that the releases would have
5 been flawed, but I think the evolution of the releases, as they
6 have gone through the iterations of the RSA -- excuse me, the
7 subrogation RSA, are such that they truly are consensual now,
8 and they are opt in rather than opt out traps for the unwary.

9 And we have a district court -- I mean a bankruptcy
10 court decision by my colleague Judge Klein, that some of you
11 are familiar with, In re Hotel Mt. Lassen way back in 1997.
12 And Judge Klein's decisions are not binding, but I respect his
13 view and hopefully he respects mine. And he does suggest that
14 there are opportunities for consensual releases, and in that
15 case that I'm going to stick that a voluntary agreement can be
16 sufficient.

17 So I'm -- and there's another case from -- I believe
18 it was Judge -- I forget who the judge was -- in the Station
19 Casino's case in 2011 in Nevada, which is unreported, but much
20 consistent with that.

21 And so in our case the -- I made a comment in one of
22 my earlier rulings that a tough decision is not a coerced
23 decision, or in my mind, a unlawful decision. So I'm satisfied
24 that the way the RSAs have played out with the releases that
25 they're permissible under the both documents.

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1 The second point that goes more to the arguments that
2 were made by, I believe, Mr. Qureshi and others, in opposition
3 to the subrogation RSA, wasn't really focused quite so much
4 today, but it's much the same. And I believe that there was
5 this notion of leverage -- and -- leverage.

6 Well, leverage is one of those things and leverage
7 isn't a bad thing unless you don't have it. When you have it,
8 it's a good thing. And what I've heard some of the lawyers
9 arguing here, and previously, is that there's somehow a breach
10 of fiduciary duty for a debtor to be doing things that might be
11 done.

12 Well, I might agree with that in many cases, but I've
13 been thinking back in my own experience when debtors take
14 positions that maybe are inconsistent with what might be a
15 fiduciary duty, but that doesn't mean they're impermissible.
16 That doesn't mean that the debtors are not entitled to use
17 leverage.

18 So leverage might be having a favorable case in your
19 favor, like whether you'll have to pay contract interest versus
20 post-petition interest. Or leverage might be having
21 exclusivity with a judge that doesn't readily break it. Those
22 are leverages that are legal and permissible, and frankly good
23 lawyers should be taking advantage of leverage, not fault it
24 for breaching fiduciary duty.

25 Now, that's easy for me to say. But I think back to

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1 my own experience with -- when are debtors and their counsel
2 allowed to take positions adverse to something that somebody
3 else wants. Well, the answer is often, when somebody wants to
4 do something that the debtor in its judgment doesn't think is
5 appropriate, like sell Blackacre when the debtor wants to
6 operate Blackacre. Or, worse yet, when people move to remove
7 the debtor in possession and insert a trustee. Is that a
8 breach of fiduciary duty to oppose a motion like that? Well,
9 on certain facts it might be. On certain other facts it might
10 not be.

11 Those of you who know me, know that I love
12 hypotheticals, so I'm hesitant to make many, but there are some
13 football fans in this case and it's leverage if you win the
14 coin toss at overtime in the Superbowl, because if you win the
15 coin toss and score, you win the game and guess who doesn't get
16 the ball? The other team.

17 So I don't think that in a solvent case -- and we are
18 operating under the assumption that the debtors are solvent,
19 everything is built around that fact. I don't think it's fair
20 to say that the debtor and the debtors' representatives are
21 somehow breaching fiduciary duty by advocating a position that
22 some constituents might oppose, whether it be an impaired class
23 or an unimpaired without even getting down into that details.

24 And certainly, you'll recall that when I raised issues
25 and responded to some of the complaints about the subrogation

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1 RSA, I took issue with the way the solvency situation was teed
2 up. I'm not sure that I would have drafted the solution that I
3 got, but there is a solution there, and Mr. Bray I think even
4 alluded today to the insolvency out, and I think that's
5 obviously applicable in the subrogation RSA. I don't know that
6 it's technically directly applicable in the words of the TCC
7 RSA but certainly the concept.

8 So my point of all this is that exercising a position
9 of leverage is not a bad thing. If you control the -- if the
10 stock of a solvent company you have leverage that people who
11 want to be control of the stock might not have. And so I'm not
12 about to say that exercise or implementation of -- or
13 utilization of leverage is a bad thing.

14 So then we get to well, what's happened in the last
15 few days? So at the -- when the RSA, subrogation RSA, was up
16 for decision, I was focusing and recalled the arguments that
17 Mr. Julian and Ms. Dumas made about the lockup provision there,
18 but again, influenced by, to some extent, the very concepts
19 I've identified here.

20 But what happened in the last few days? The mediated
21 resolution, publicity about it, an offer by the proponents to
22 see what the governor says. The governor perhaps to some gave
23 a position that was a surprise, maybe to others was no surprise
24 at all. Doesn't matter. That led to the next question of
25 well, now what happens? And we learned yesterday what happened

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1 is what the debtors chose to do and the proponents.

2 And so what it comes down to is what do I make of this
3 question of lockup, whether it's I'm defining it correctly or
4 not isn't the point. Ms. Dumas and Mr. Julian, and Mr. Pitre
5 made it very clear what the lockup means to them. Mr. Karotkin
6 and Mr. Bennett certainly made it from their point of view.
7 And I don't discount Mr. Stamer and the other parties'
8 arguments against it, but it's back to two guiding principles
9 here that one of them goes way back, again, to one of the very
10 first hearings we had in this case.

11 I said it before; I don't have to say it, but I will
12 say it because everybody in this room knows it: There are
13 billions of dollars' worth of claims represented by experienced
14 lawyers in this courtroom whose clients chose to be lenders and
15 were in it for a profit. There are tens of thousands of
16 victims whose lawyers are in this room who just want to go
17 about their life and their homes, and their lives were upended
18 by the devastating wildfires. They didn't choose to be
19 predators and didn't choose to be anything other than people
20 that live their lives normally.

21 And so what was the goal for everyone, me, and the
22 lawyers? And again, I don't suggest that there's a responsible
23 person in this courtroom, lawyer or nonlawyer, who wished ill
24 will on the victims or to make it worse for them.

25 But the question comes down to what advances the cause

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1 more, moving forward or moving backwards? I had the colloquy
2 with Ms. Dumas months ago about exclusivity. I didn't continue
3 it the first time. I then terminated it. I remember the
4 conversation we had about that and whether she and her clients
5 wanted a mediator or not and the outcome of that. And in all
6 of those decisions, I had to think to myself, do I know better
7 than the lawyers representing the victims know best for their
8 clients, and I haven't changed my view today, to this day. To
9 today, I don't think that I have the wisdom or the knowledge or
10 the -- frankly, it's my role to second-guess the decisions of
11 those victims who have told their lawyers, this is how we want
12 to go with the plan.

13 So my view comes down to do I really call Mr. Bennett
14 or his clients' bluff or Mr. Karotkin's? No. The answer is
15 that's not my role. Was it permissible, legally permissible,
16 to have the lockup? Well, lawyers with a lot of experience in
17 a lot of complicated cases tell me lockups are routine. Well,
18 that might be true. I don't know how routine they are in cases
19 of mass tragedies with tens of thousands of victims, but I'm
20 not going to worry about whether the lockup is routine or not
21 routine. It's sui generis in my experience in this case, but
22 I'm not going to second-guess the judgment call of the lawyers
23 who then conferred with their committee.

24 I'm sure you all know the committee is very active,
25 and the governor's observation about is it better to have open

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1 the door. Mr. Bray's arguments, Mr. Stamer's arguments, Ms.
2 Mitchell's statements, not quite as the advocate for -- that
3 sounds wrong. She's very much the advocate for her client, but
4 I'm saying the governor's perspective is not quite that same as
5 the lawyers representing parties-in-interest here.

6 And so I've concluded that whether it's the exercise
7 of leverage or being in the right place at the right time, the
8 law permits the parties, whether a company is -- excuse me --
9 whether the classes are impaired or unimpaired, it permits the
10 litigants to do things like insist on lockups. Because I'm
11 persuaded that the chances of getting to the goal of
12 confirmation are enhanced rather than impeded, I'm sticking
13 with their advice and their recommendation.

14 The fact that Mr. Julian and his clients switched
15 sides or switched allegiances isn't the point. Their job is to
16 do what they think is right for their constituents, and they've
17 chosen to go -- to roll their dice with the plan sponsored by
18 the debtor in equity. I'm still comforted by the fact that
19 they have a fallback position in case that plan doesn't
20 succeed.

21 So I said that I wanted to have a follow-up hearing
22 with the principle counsel about confirmation issues. I've
23 decided we're not going to do that. I will do it at some point
24 in the future. I will issue orders that I'll ask Mr. Feldman,
25 Mr. Karotkin, and Ms. Dumas to upload for orders that recite

PG&E Corp., Pacific Gas & Electric Co.

1 for the reasons stated on the record, and it's just my oral
2 record. I don't intend to do a written findings and
3 conclusions. I hope my thinking has been clear, and if there's
4 any questions or ambiguity, I'll ask you to tell me you want me
5 to clarify it, but for the record then I'm overruling the
6 objections by the various parties who asserted them today, and
7 I am approving the two separate RSAs for the reasons that I've
8 attempted to articulate in my oral comments, and I will
9 issue -- and I'd like to do it at the same time. So I will --
10 and my intention will be to get those orders in from counsel, I
11 will sign them, and anybody who wishes to seek review, they'll
12 have it sooner rather than the later.

13 And with that, I will then invite Mr. Karotkin to
14 confer with Mr. Stamer and others in the near future -- but
15 that doesn't have to mean Christmas week -- but in the near
16 future if we have to have another hearing before January 14th
17 to talk about whether to proceed with confirmation, I'll be
18 happy to do that earlier, but if not, we'll put it over for
19 January 14th.

20 So with that, I will thank -- I will let you speak,
21 but I will thank you for a long day and hard work and
22 appreciate your efforts.

23 Mr. Stamer?

24 MR. STAMER: Thank you, Your Honor. I understand your
25 ruling, but I just have one question.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Yes, sir.

2 MR. STAMER: It's a clarification. And I think I -- I
3 hope I know the answer. The bondholders without the TCC as
4 coproponent are still free to prosecute our plan. This is --

5 THE COURT: Of course. Absolutely.

6 MR. STAMER: Okay. Thank you very much.

7 THE COURT: Absolutely. Your plan, in fact -- well,
8 that's why you're invited to confer with --

9 MR. STAMER: I --

10 THE COURT: -- me and --

11 MR. STAMER: I just wanted to make sure on the record
12 that --

13 THE COURT: Absolutely on the record.

14 MR. STAMER: -- this wasn't impacting the termination
15 of exclusivity. Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 Yes, sir?

18 MR. ZUMBRO: Good afternoon, Your Honor.

19 THE COURT: Yeah.

20 MR. ZUMBRO: My apologies. One quick housekeeping --

21 THE COURT: Again, I know your name. Just state it.

22 MR. ZUMBRO: Paul Zumbro from Cravath, Swain & Moore.

23 THE COURT: Mr. Zumbro.

24 MR. ZUMBRO: First of all, thank you for your
25 thoughtful, and more importantly, favorable ruling. But one

PG&E Corp., Pacific Gas & Electric Co.

1 housekeeping matter, the Court had entered a docket text order
2 on the compromises that the fee examiner had reached, and just
3 because today is the last omnibus hearing that is here --

4 THE COURT: Wait, wait. One of my law clerks is
5 working on the order that I was hoping to issue today.

6 MR. ZUMBRO: Oh, okay.

7 THE COURT: But just so that they're no surprises,
8 look, I'm not going to publicly go into details of what
9 prompted me to do what I did. Leave it -- suffice it to say
10 that I had a different point of view than the examiner did
11 about how it was supposed to be teed up.

12 MR. ZUMBRO: Okay.

13 THE COURT: So probably tomorrow there will be an
14 order -- there will be two documents, one just amends the fee
15 and an examiner procedural order, another sets hearings in the
16 January calendar with deadlines. The problem -- the short
17 answer is there needed to be an opportunity for people to
18 object and be heard and not one week, no objection period. So
19 there are no surprises. You'll get that shortly. And if
20 you're any particular firm that was -- felt picked on because
21 there is a slight delay, all I can say is you've got your
22 eighty percent -- I mean, twenty percent withhold. It's not --
23 so you'll have to live with it.

24 MR. ZUMBRO: Okay. Thank you, Your Honor.

25 THE COURT: Okay.

PG&E Corp., Pacific Gas & Electric Co.

1 Anyone else have a question about -- or clarification?

2 Mr. Karotkin?

3 MR. KAROTKIN: I have a question about some -- it has
4 nothing to do with the ruling. Your Honor had --

5 THE COURT: Oh, come on.

6 MR. KAROTKIN: Your Honor had scheduled briefing on
7 whether the subrogation claims were impaired.

8 THE COURT: Right.

9 MR. KAROTKIN: And we submitted a brief, and I think
10 that a couple of the parties didn't submit formal opposition
11 but reserved their rights, I think pending --

12 THE COURT: Yeah. I think they want to --

13 MR. KAROTKIN: -- whether you were going to approve
14 the RSA. So I think we need to get --

15 THE COURT: Well, you still believe --

16 MR. KAROTKIN: -- back on the schedule.

17 THE COURT: -- that they're impaired, right?

18 MR. KAROTKIN: Of course, yes.

19 THE COURT: Yeah.

20 MR. KAROTKIN: So I guess we need to get that back on
21 schedule. I can confer with counsel on that and come back to
22 you?

23 THE COURT: Well, and also we need to get back on
24 calendar the question of the liquidated versus the unliquidated
25 disputed claims. So I would ask you, Mr. Karotkin, to take

PG&E Corp., Pacific Gas & Electric Co.

1 that up in the first case with the people that are advocating
2 for the --

3 MR. KAROTKIN: Yes.

4 THE COURT: -- impaired, not impaired, and we have a
5 schedule and I think we can live with it, or if necessary, we
6 can move it. I'm trying to avoid having you have multiple
7 hearings, but you --

8 MR. KAROTKIN: No, no.

9 THE COURT: -- have to have the holidays, but I'm
10 also -- I don't -- this is a long day for everybody. And so I
11 want to avoid these big calendar congestions, and January 14th
12 got a lot of stuff on it.

13 MR. KAROTKIN: Right.

14 THE COURT: So we can accommodate you.

15 MR. KAROTKIN: Okay.

16 THE COURT: I'm going to be here. You guys are the
17 ones that are going -- not to be here.

18 MR. KAROTKIN: Okay. The only reason I asked about
19 the subrogation because it was calendared for Friday, but
20 there's really no point in go forward with that --

21 THE COURT: Right.

22 MR. KAROTKIN: -- but we'll confer with counsel.

23 THE COURT: Correct.

24 MR. KAROTKIN: Okay.

25 THE COURT: So on both issues, though?

PG&E Corp., Pacific Gas & Electric Co.

1 MR. KAROTKIN: Yes, sir.

2 THE COURT: On both?

3 MR. KAROTKIN: Yes, sir. Yes. Thank --

4 THE COURT: Anyone else want to raise a question?

5 Yes, sir, in the back? Did you want me, or someone else? Mr.
6 Pascuzzi, I'm sorry. I couldn't recognize you.

7 MR. PASCUZZI: I'm sorry, Your Honor --

8 THE COURT: Now, I can.

9 MR. PASCUZZI: You brought up the -- Paul Pascuzzi,
10 cocounsel with the Attorney General's Office for California
11 State Agencies. You brought up the liquidated, unliquidated
12 issue.

13 THE COURT: Yeah.

14 MR. PASCUZZI: I think that's off, and under our
15 stipulation, the only way that goes back on is if the
16 estimation proceeding gets going again because --

17 THE COURT: Well, I guess I -- maybe I missed that. I
18 thought -- well, what -- what then -- you clarify for me. What
19 happens to a claim by either one of your agencies or FEMA for a
20 fire that isn't within the twenty-two on the list?

21 MR. PASCUZZI: It would be in the unimpaired class of
22 the plan.

23 THE COURT: Is that right? Mr. Karotkin, is that
24 correct or Mr. Orsini? Unimpaired. In other words, if a
25 California agency has a fire damage claim arising out of one of

PG&E Corp., Pacific Gas & Electric Co.

1 the fires that's not on Exhibit A, does there need to be
2 another estimation or not? I mean, what do you -- I mean, it
3 still come down to the question is it liquidated or
4 unliquidated? So you follow me on the question? I don't want
5 to trap you late in the day. I just want to make sure we
6 clarify it.

7 MR. ZUMBRO: Sorry. Paul Zumbro, Your Honor. I think
8 that's correct. I think those would be general unsecured
9 claims because they're not part of the fire trails, but we --
10 the issue that had been briefed was really specifically whether
11 these claims were to be part of the estimation proceedings
12 under Judge Donato, and I think what Mr. Pascuzzi was saying
13 that we mutually agree that given that the settlement has
14 occurred that Your Honor has approved the RSAs for, there was
15 no longer the need to brief that issue about whether those
16 claims were liquidated for purposes of --

17 THE COURT: Well, then --

18 MR. ZUMBRO: -- the estimation.

19 THE COURT: -- the answer to the question then. So
20 let's go back to one of the fires that is not on the twenty-
21 two -- or twenty-one on Exhibit A, right? And there are a
22 handful of fires.

23 MR. ORSINI: I think I can answer your question, Your
24 Honor. Kevin Orsini, from Cravath. I think you're right that
25 there are a small number of fires that are not part of the

PG&E Corp., Pacific Gas & Electric Co.

1 seventeen or eighteen fires that are not the Butte fire, and
2 therefore as a technical matter are not part of the resolution
3 or the post-trust.

4 THE COURT: The estimation that has now gone into the
5 trust, right?

6 MR. ORSINI: That's exactly right, Your Honor.

7 THE COURT: Okay.

8 MR. ORSINI: Those claims, I think are general
9 unsecured claims. Complete candor, I don't think anyone in
10 this room has spent a whole lot of time focusing on those
11 claims, not to say that they're not important claims.

12 THE COURT: Ms. Winthrop has.

13 MR. ORSINI: But I think ultimately what the -- what I
14 would suggest especially at 5:30 is let all of us confer about
15 the best path forward with those. Those may be claims that
16 there is some merit in using Judge Newsome with an E or not to
17 see if there is a way to resolve them so we can avoid briefing
18 we don't need to have and --

19 THE COURT: Mr. Orsini, you're turning --

20 MR. ORSINI: -- and we can come back.

21 THE COURT: -- into California, and I thought you'd
22 tell me it's 8:30.

23 But the point is if Mr. Pascuzzi's client filed a
24 claim for fire such and such, it's deemed allowed even if it's
25 unliquidated, but you have to object to it unless you want to

PG&E Corp., Pacific Gas & Electric Co.

1 let it go, but if it's liquidated, then you don't do anything,
2 but obviously, if Judge Newsome or the parties want to
3 stipulate around it, fine. We just need to deal with it one
4 way or the other.

5 MR. ORSINI: And I think we should all discuss how
6 best to deal with that because that hasn't been the focus.

7 THE COURT: And Ms. Winthrop needs to be part of this
8 conversation. She's got some very significant clients.

9 MS. WINTHROOP: Sorry, Your Honor. Actually, I was
10 going to suggest what Mr. Orsini said, which is I would like
11 an -- I did not bring it with me today. I would like an
12 opportunity to think about how this all plays out, and I think
13 the parties should meet and confer with respect to how best to
14 resolve these issues.

15 THE COURT: Okay. And Mr. Troy, you're standing back
16 there. It's the same for you. I mean, you three counsel are
17 the three major players on this issue on the other side of
18 the --

19 MR. TROY: Yes. That's true, Your Honor, and I would
20 agree with Mr. Orsini. We just need to sit down and talk about
21 those and perhaps they could be part of a mediation session.

22 THE COURT: You're more than welcome for me to impose
23 on Judge Newsome with an E to put him -- make him work some
24 more, but if he doesn't want to, I'll do it.

25 MR. TROY: Very good, Your Honor.

PG&E Corp., Pacific Gas & Electric Co.

1 THE COURT: Okay.

2 IN UNISON: Thank you, Your Honor.

3 THE COURT: Anyone else? All right. Thank you,
4 everyone, for your long day and your hard work and efforts.
5 Happy Holiday, everyone.

6 IN UNISON: You, too, Your Honor. Thank you.

7 (Whereupon these proceedings were concluded at 5:32 PM)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sharona Shapiro

/s/ SHARONA SHAPIRO, CET-492

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Date: December 19, 2019

	242:9;254:13;260:5; 264:10;272:25;282:8; 303:5,7,13	acts (1) 147:21	adjudicated (2) 65:10;69:14	159:16;167:9;209:4; 221:7;303:18
\$		actual (4) 113:23,23;165:16; 267:3	adjudicating (1) 69:16	again (112) 16:13;19:6,13;24:21; 25:14;31:11;33:21; 40:7;52:4;60:4,11; 65:21;67:18;71:4;73:2, 15;79:24;87:8;93:2; 104:21;105:10,16; 106:7;107:9,20;111:3, 4;112:1;113:11; 116:11,18;117:18; 118:25;119:20;126:18; 127:10,17;128:16; 130:22;136:6,13; 143:3;147:18;151:18; 153:17;155:4,23; 160:20;170:14;171:9; 172:11,20;173:12; 176:21;177:9;182:12; 185:15;187:11;191:7, 15;194:1;198:22; 199:8,22;200:14; 201:12;202:8,9;203:2, 8,25;205:7;207:19; 218:5,10;219:21; 220:11;222:18,18,18; 234:1;236:3,16;237:8, 21;238:10,16,24; 241:8;242:2,5;247:11; 255:25;256:23;260:4; 261:24;268:1;276:2; 277:22;279:14,14; 280:2;282:16,19; 284:7,10;294:18; 298:18;299:9,22; 303:21;307:16
\$5.95 (1) 198:6	absorb (3) 128:3;138:5;139:14	actually (36) 12:15;23:21;29:23; 31:15,22;37:7;60:18; 77:8;88:11;100:8; 124:2;131:10;132:8; 156:8;161:16;186:14; 187:22;188:5,17; 189:12;190:3;191:13; 193:1;197:7;210:11; 211:12;218:2;225:14; 238:1;248:16;269:13; 271:8;275:25;280:17; 281:1;310:9	adjudication (1) 72:5	
A	abundantly (2) 108:3;193:5	ad (18) 110:18;111:13; 112:21;121:15;123:20; 124:16;130:5,9,14; 155:25;160:22;177:16; 187:14;239:20;258:5; 276:3;278:18;291:6	administer (2) 99:6,7	
AB (34) 49:4;104:2,16;106:6; 112:6;118:16;129:9; 135:2;192:18,19,19; 194:24;195:10;201:20; 209:20;215:23;221:23; 223:5;235:2,5,7;237:6; 238:2,8;249:2;255:1, 13;256:16;258:16; 259:7;263:16;279:5; 283:17;291:22	accept (8) 24:8;38:20;86:1; 99:8;137:12;171:21, 24;202:7	adamant (1) 250:9	administrative (1) 152:9	
	accepted (1) 285:1	add (7) 68:16;121:10;130:9; 131:9;164:7;191:22; 265:25	administered (1) 154:17	
	accepting (1) 155:3	added (1) 134:4	administering (1) 100:13	
	access (2) 40:24;209:19	addition (2) 205:4;212:8	administration (3) 106:5;118:4;154:7	
	accommodate (1) 306:14	additional (2) 205:4;278:23	administratively (1) 152:12	
	accomplish (2) 111:5;223:21	address (34) 9:21;10:11;12:8,13; 37:7;42:7;74:1;102:13, 13;103:23;104:16,17; 105:18;108:2;109:13, 23;110:1;111:12; 113:11,12;117:16; 119:6;128:13;137:1; 150:18;185:3,23; 187:7;211:13;221:9; 222:13;227:17;250:7; 294:3	admission (1) 286:21	
	accomplished (1) 111:3	addressing (1) 122:25	advance (1) 267:11	
	accord (1) 275:3	adequate (2) 222:12;284:23	advances (3) 257:6;261:3;299:25	
	according (1) 177:23	adhere (2) 131:5;255:25	advantage (2) 178:23;296:23	
	account (4) 222:6;244:3;262:11; 294:1	adjoin (1) 135:20	Adventist (12) 121:14,21;126:25; 143:24;150:21;152:15, 22;153:12;163:3,20; 212:17;224:19	
	accurate (1) 268:23	adjudicate (1) 64:16	adverse (8) 71:3;188:14;229:25; 260:14,16,19,21;297:2	
	accurately (1) 197:22		advice (4) 178:12,14,18;301:13	
	achieve (4) 111:6;224:2;290:4; 291:11		advisedly (1) 239:1	
	achieved (5) 111:7;222:3;290:1; 291:9,10		advisement (2) 259:14;293:14	
	achieves (2) 105:23;110:13		advises (1) 238:7	
	acknowledge (3) 112:25;214:3;248:20		advisor (1) 188:9	
	acknowledged (2) 223:17;289:16		advisors (1) 217:17	
	acknowledges (2) 267:5;288:19		advocate (4) 238:20;244:6;301:2, 3	
	acknowledging (1) 99:10		advocating (3) 257:9;297:21;306:1	
	across (2) 90:13;189:17		affairs (1) 89:11	
	act (3) 216:10;254:8,8		affected (5) 69:16;153:9;165:16; 210:20,21	
	action (11) 20:24;21:3;35:14; 37:10;47:15;50:11; 71:23;115:2;127:7; 129:5;227:3		affidavit (1) 202:18	
	actions (3) 81:23;98:5;131:24		affirmed (1) 284:13	
	active (1) 300:24		afternoon (11) 51:14;125:16,21; 128:14;136:13;156:9;	
				age (1) 39:13
				agencies (12) 53:23;127:17,22,24; 130:22;148:10;162:21; 164:6;180:25;214:19; 307:11,19
				agency (3) 128:20;163:8;307:25
				agenda (2) 155:14;250:6
				aggregate (2) 220:14;224:19
				ago (18) 12:22;20:20;32:14;

131:14;167:23;185:8; 191:19;205:24;221:16; 228:8;232:4;239:19; 248:12;259:15;260:9; 262:21;276:5;300:2 agonizing (1) 135:10 agree (37) 16:15;17;19:12;33:7; 14;35:16;50:10;76:3; 92:4;98:14;16;100:4; 123:3;127:4;132:5; 139:12;145:10;158:22; 171:2;174:25;177:21; 185:4;197:10;206:20; 210:9;11;222:2; 225:13;228:21;240:21; 269:6;14;273:20; 277:18;296:12;308:13; 310:20 agreeable (1) 91:15 agreed (37) 9:9;10:17;24:8;26:3; 40:5;14;15;51:15;61:3; 73:14;104:10;10; 110:4;16;121:11; 125:12;132:15;159:3; 8;161:11;16;22; 169:22;170:19;172:18; 173:9;175:5;180:12; 13;185:19;189:23; 240:8;9;278:15; 291:12;17;18 agreed-upon (1) 182:5 agreeing (5) 11:16;12:4;14:25; 39:19;65:7 agreement (40) 8:13;9:21;16:10; 41:13;62:13;67:15; 72:12;78:5;92:3; 121:16;20;24;128:24; 146:7;10;147:5; 154:11;19;158:5; 161:18;189:6;213:7; 217:24;222:11;225:5; 226:1;229:19;231:21; 237:2;238:13;240:10; 241:4;5;243:5;10; 270:15;286:18;289:3; 13;295:15 agreements (3) 272:3;4;286:20 agrees (1) 117:24 aground (1) 236:24 ahead (21) 11:8;17:3;32:1;39:5; 57:16;68:16;72:3; 84:13;87:1;97:24;	102:25;108:15;121:12; 133:11;138:2;3;147:3; 211:3;214:15;215:20; 293:8 air (1) 13:2 Akin (4) 155:25;160:21; 187:14;276:3 Alameda (1) 86:25 Alan (1) 166:21 albeit (1) 180:18 Alexander (32) 17:15;16;19;19;22; 24;18:1;7;10;13;16;20; 22;21:10;22:16;24:17; 26:18;38:25;39:3;6,7; 12;22;24;40:1;4,8,10; 12;41:9;49:19;60:1 Alexander's (3) 16:23;17:7;33:8 alive (4) 148:6;179:11;197:2; 287:21 allegations (1) 69:2 alleges (1) 10:6 allegiances (1) 301:15 all-in (1) 230:14 allocated (2) 140:17;23 allow (15) 20:25;22:7;30:17; 97:17;132:16;148:2; 25;149:24;152:24; 170:9;184:25;199:1; 229:9;255:23;282:22 allowance (12) 33:4;127:15;147:13; 15;148:18;149:14,19; 21;22;152:19;24; 269:16 allowed (13) 19:13;31:14;32:20; 21;23;64:9;134:25; 149:1;194:4;10;196:5; 297:2;309:24 allowing (4) 135:7;149:4;165:10; 287:3 allows (2) 154:25;198:21 alluded (3) 190:21;288:18;298:4 almost (7) 135:5;253:10;269:6; 11;23;270:1;276:13	alone (5) 128:4;149:12; 216:24;217:1;224:12 along (7) 15:13;34:15;45:21; 23;81:21;222:21; 239:21 Alsup's (1) 250:10 alternate (3) 15:10;63:11;177:11 alternative (8) 87:11;97:18;99:17; 131:15;178:5;232:24; 246:23;255:24 although (7) 59:12;127:18;156:1; 190:15;202:5;206:10; 244:4 always (2) 65:23;239:25 Amanda (2) 243:16;253:9 ambiguity (1) 302:4 amend (2) 82:4;96:20 amended (15) 21:12;31:7;16;32:13; 52:1;94:22;108:1,20; 144:24;25;209:17,25; 25;212:7;265:13 amendment (8) 94:10;104:10;11; 108:23;110:5;145:2; 196:5;220:15 amendments (1) 97:16 amends (1) 304:14 American (1) 294:17 among (15) 100:25;105:20; 118:23;134:16;140:24; 142:6;145:20;151:17; 154:18;21;201:2; 288:21;289:11;291:11; 294:23 amongst (1) 210:18 amount (22) 11:7;34:11;87:22; 114:15;117:24;25;25; 118:6;134:25;137:25; 140:16;155:3;157:20; 158:24;192:12;209:6; 222:12;14;232:20; 245:11;256:14;292:15 amounts (6) 77:5;118:17;119:14; 132:5;7;274:23 ample (3)	16:25;17:9;151:8 amplification (1) 116:22 amplify (2) 120:11;287:2 analysis (1) 21:13 analysts (1) 245:13 analyzed (3) 26:21;233:17;287:18 anathema (1) 26:25 anchor (1) 202:13 and-a-half-billion-dollar (1) 277:13 Anne (1) 61:18 announce (1) 125:18 announced (4) 203:17;204:17; 260:4;10 anomaly (2) 210:6;242:2 answered (4) 155:14;207:8; 239:19;280:17 anti- (1) 167:25 anticipate (3) 34:24;167:12;290:18 anticipating (1) 290:19 anticipation (1) 207:2 anticompetitive (1) 277:2 anti-competitive (1) 212:9 anti-insurance (1) 59:18 anxiety (1) 244:23 anymore (2) 51:23;275:18 anyplace (1) 254:15 apart (6) 15:12;30:5;64:6; 133:12;286:16;289:25 apologies (1) 303:20 apologize (5) 29:10;155:18;161:4; 237:16;265:5 apologized (1) 182:13 apparently (2) 144:4;145:11 appeal (1) 36:18	appeals (4) 159:17;239:25;25; 240:1 appear (5) 34:21;156:4;165:11; 218:6;247:13 appearance (3) 9:13;35:11;165:2 appeared (4) 29:18;132:1;156:3; 165:5 appearing (4) 9:13;10:3;61:16; 143:5 appears (2) 220:16;238:4 appellate (1) 21:2 apples (8) 233:7,8,16,16,23,23; 279:17,17 applicable (10) 66:17;129:15;166:3; 174:14;179:3,14,17; 198:25;298:5,6 application (2) 128:12;231:7 applies (1) 235:5 apply (2) 96:16;231:8 appointed (4) 105:22;111:6;199:8; 291:7 appointing (1) 105:23 appreciate (17) 35:2;41:23;42:16,18; 50:4;75:7;134:14; 146:8;147:16;153:23; 165:10;215:21;220:4; 223:3;232:8;265:22; 302:22 appreciation (2) 143:18;264:21 approach (2) 65:9;197:10 approaching (1) 215:24 appropriate (11) 26:16;30:23;34:12; 67:6;94:11;102:4; 128:24;129:6;158:23; 291:19;297:5 appropriately (1) 141:17 approval (15) 114:1;116:16; 117:20;119:13;123:5; 130:2;153:8;154:16; 219:19;239:22;270:9; 16,17;271:1;283:17 approve (77)
--	---	--	---	--

94:14,21,24;97:24; 99:8;100:5,6;101:12; 103:25;104:19;115:12; 14;116:2,18;123:9; 124:1;128:24;129:23; 131:13;140:23;146:5; 148:12;153:11;158:2; 3;159:10,13;160:7; 161:20;162:1;167:25; 172:19;173:9;175:20; 176:24;179:10,22; 180:8,14;182:16; 183:19,23;190:17; 193:14,15,15,17; 196:25;199:3;203:21; 204:13,22;206:20; 207:21;210:7;213:7,9; 216:18;241:23;251:5; 16;258:14,24;259:6; 19;260:13,14;261:1,2; 272:15;282:2;283:5; 286:22;292:13,22; 293:11;305:13 approved (29) 15:24,24;16:1; 146:10;149:11;157:12; 159:17;176:5;177:18; 200:8;205:15,16; 218:22;220:1;241:6; 256:21;261:1,12; 262:13;265:25,25; 266:3;269:17;270:23; 275:10;284:23;287:3; 288:1;308:14 approves (2) 161:19;284:16 approving (15) 99:11;110:24; 119:13;153:16;172:9; 179:23;196:17,18; 206:6,7;215:15;248:4; 251:19;282:10;302:7 approximately (2) 38:16;187:17 April (1) 249:9 arbitration (12) 61:25;62:14,20,22; 63:25;66:16,24;67:4,9; 68:7;70:22,24 arbitrator (2) 62:15;71:10 areas (1) 138:2 arena (1) 101:16 Arent (1) 209:5 arguable (1) 157:9 argue (10) 16:19;30:21,21; 62:20;71:6,8;125:15; 156:2;190:2;207:17 argued (7) 73:6,7,10;108:1; 190:3;211:11;294:2 argues (2) 71:13;206:1 arguing (4) 50:19;73:12;90:1; 296:9 argument (28) 37:7,9;47:1;66:14, 14,23;70:17;74:17,19; 95:5;96:17;102:12; 107:22;126:4;129:2; 131:1;134:12;143:8; 162:9;166:4;186:3; 187:4;202:22;215:13; 253:2;282:14;283:6; 293:1 arguments (17) 9:23;10:12;23:7; 38:23;45:3,19;63:16; 158:13;209:10;212:1; 214:17;257:17;296:1; 298:16;299:8;301:1,1 arise (2) 67:15;259:10 arising (1) 307:25 arms' (1) 105:20 around (18) 11:3;13:21;101:10; 106:4;111:24;123:23; 136:10;184:17;225:20; 253:15;255:6;269:10; 278:2;284:9;285:14; 293:2;297:19;310:3 arrived (1) 137:21 article (1) 276:20 articles (2) 191:8;203:10 articulate (1) 302:8 articulated (2) 25:24;209:17 articulating (1) 61:11 aside (16) 18:8;36:15;69:2; 80:3;108:5;124:2; 159:17;169:14,19; 177:3;184:3;195:18; 232:17;239:24;240:22; 242:5 aspect (2) 132:18;148:3 assert (3) 79:21;111:14;291:2 asserted (3) 64:21;201:24;302:6 asset (1) 10:16 assigned (3) 10:17;227:3,17 assignment (12) 129:4;135:14; 169:13;171:9;186:10; 187:4;248:19,24; 249:22,24;251:9;252:3 assignments (3) 249:1,14;286:5 assistance (1) 106:11 associated (3) 110:21;219:22; 228:15 Associates (1) 9:16 assume (12) 15:20;21:11;25:20; 64:2;83:19;175:19; 195:3;239:21;254:10; 257:5;274:10;275:13 assuming (2) 53:25;57:3 assumption (2) 190:23;297:18 assure (3) 119:5;289:2;292:18 assured (1) 292:17 Astelford (1) 126:12 asterisk (1) 23:3 Astleford (1) 136:22 attack (1) 284:15 attempt (2) 84:18;259:6 attempted (2) 72:25;302:8 attend (1) 130:8 attendance (1) 134:14 attendant (1) 38:14 attorney (4) 51:14;126:11; 162:20;307:10 attorneys (3) 65:20;106:8;219:11 attractive (2) 193:2;236:21 attributable (1) 119:14 audience (1) 103:7 August (1) 22:9 auspices (1) 105:21 authority (4) 59:2;92:18,20; 149:23 authorization (1) 82:11 authorized (1) 30:14 Auto (1) 295:1 autograph (1) 120:23 automatic (3) 29:11;104:11;108:21 automobile (1) 33:22 availability (1) 223:9 available (13) 27:6;29:13;69:8,11; 73:19;86:4;201:11; 202:25;203:5;223:6, 20,20;256:21 avoid (6) 98:5;250:20;285:17; 306:6,11;309:17 award (1) 24:24 aware (7) 19:7;40:11;41:25; 108:18;231:2;244:19; 245:25 away (28) 13:21;19:2;61:4,7; 68:22;81:14;87:10; 90:7;105:13;108:21; 179:23;182:2;186:17; 189:11;191:2;197:11; 200:9;207:4;208:17; 240:5;256:8;259:12, 12;261:21,23;262:1,4; 268:17 awful (2) 57:7;146:5 B back (93) 14:14,18;15:15; 23:25;25:14;41:7; 43:23;55:3;59:6,9; 66:15;71:23;73:18; 79:8;80:12,20;88:21; 101:17;116:1;119:7; 122:8;123:9,23; 129:22;148:5,12; 151:14;153:10;154:2; 159:13;160:11;161:20; 162:13;167:18;172:22; 174:8;179:21;180:6; 183:5;185:17;186:10; 187:1;190:6;191:9; 192:2;198:22;200:10; 202:9;203:2,8,11; 207:5;208:17;231:17; 232:12;236:19;238:23, 23;239:18;241:7; 244:8;246:21;249:9; 253:24;258:25;259:24; 262:6;266:4;268:24; 269:10;271:11;277:6; 284:16;286:23;287:16; 289:14;292:14,14; 295:1,11;296:13,25; 299:8,9;305:16,20,21, 23;307:5,15;308:20; 309:20;310:15 background (4) 10:11;11:25;96:2; 279:15 backpedaling (1) 225:16 backstop (1) 203:1 backwards (1) 300:1 bad (17) 26:25;58:10;99:2; 101:2;173:22;182:3; 190:7;233:3;242:3; 253:3,17;261:9,11; 284:18;296:7;298:9,13 Baker (3) 10:3;131:19;221:8 balance (3) 9:22;68:19;290:1 ball (6) 74:2;251:1;252:15; 257:6;261:3;297:16 ballots (2) 198:3;271:17 bank (2) 209:2,2 bankruptcy (70) 10:14;23:2,6;28:12, 15,20;32:5;37:1,22; 45:9,14,16,18;47:10, 10;48:15;54:22,23; 55:3,22;59:8,10,16,19; 60:9;64:14;65:23;66:1, 3;78:20;80:3;81:22; 82:4;85:13;88:16,25; 89:23,23;90:6;95:22; 97:16;98:5;99:6,11,14, 25;100:13;101:13; 105:8,22;106:11,11; 109:6;137:17;198:3; 223:7,20;229:6; 232:13;233:17;239:8, 9;243:24;245:18; 246:2,3;247:6;262:7; 294:18;295:9 banks (2) 168:14;199:24 bar (2) 96:13;226:22
--

Barata (1) 135:18 bargaining (4) 62:13;63:11;67:15; 72:12 barrel (1) 188:23 bars (1) 81:23 based (26) 58:25;103:8;104:12; 140:9;155:1;199:9; 200:13;201:11;202:8; 204:16;209:13;213:3; 222:14;226:2;228:13; 229:8;230:25,25; 239:16;240:9;263:25; 264:1;265:15;277:3; 289:21,23 basic (1) 199:15 basically (5) 153:5;161:18;170:7; 268:1;279:22 basis (6) 63:10,11;105:6; 165:22,22;253:18 battle (2) 22:8;287:5 battling (1) 140:13 Baupost (1) 202:12 bear (2) 137:24;293:9 beats (1) 287:19 beautiful (1) 139:11 become (1) 258:16 becomes (1) 270:3 beep (1) 253:14 begin (3) 129:21;148:7;176:23 beginning (4) 198:18;199:14; 271:2,4 begins (2) 17:5;46:13 begun (1) 247:17 behalf (24) 9:16;10:3;35:6,7; 75:21;95:17;101:11; 121:13;124:16;131:19; 142:6;143:5;152:5; 155:25;160:21;164:6; 187:14;209:5;220:7; 12;221:8;226:7; 254:21;258:4	behind (5) 10:25;132:11;200:9; 241:15;268:4 belief (7) 94:10;221:23; 226:13;235:19,21; 251:20;285:15 believes (6) 30:23;145:24;189:7; 237:3,4;238:19 bells (1) 219:15 belongs (1) 170:12 bench (4) 89:8;156:7;189:18; 258:16 beneficial (1) 228:7 beneficiaries (3) 14:22;118:13,24 benefit (6) 23:11;30:6;170:4; 235:2;250:3;278:7 benefits (7) 10:12;68:21;210:2; 223:5;262:11;280:6; 291:23 Bennett (45) 207:13;236:17; 244:4;258:1;265:21; 266:15,16;267:14,20, 24;268:15,17;269:22, 25;270:7,18,21,24; 271:1,5,7,15,19;272:3, 7,9,13,16,18,20,22,25; 273:5,7,21,25;274:8, 10,12,14;277:17; 280:10;288:18;299:6; 300:13 Benvenuti (47) 75:24;76:1,5,9,12, 16;78:4;81:5;82:7,10, 17,19,21,24;83:1,4,20, 22;84:1,13,14,18;85:9, 15,18,21,25;86:18; 87:14;88:1,8;90:9,14, 24;91:7,11,17,20,24; 92:7,11,15,17;93:1,7, 11,21 BERESTKA (48) 75:14,20,20;77:6,11, 13,15,18,20;78:2,6,8, 11,13,23;79:9,11,15, 18,25;80:1,7,11,13,23; 81:11,13,16,18;82:1,6; 88:11,18;89:1,4,12,14, 16,19,25;90:4,20,22; 91:13,23;92:1;93:12, 18 Berestka's (3) 93:2,6,8 besides (2)	132:18;140:10 best (39) 54:10;65:14;106:8; 113:6;132:16;138:8; 139:8;143:22;171:12, 22;172:3,12;179:24; 180:4,15;181:10,12,13; 206:25;219:12;222:2; 226:9,13,13;228:24; 231:7;237:24;238:1,3; 245:8,15;246:14; 263:13;284:25;289:4; 300:7;309:15;310:6,13 bet (1) 31:19 Beth (1) 209:4 bets (3) 174:19;176:3;195:6 better (29) 33:14;65:25;67:2; 96:15;138:5;172:9; 180:23;184:6;185:2; 188:6;205:3;214:10; 219:8;241:15;242:19; 252:7,16;264:21; 279:6,6,7,8;280:15,20; 281:5,18;282:12; 300:6,25 beyond (6) 11:7;62:3;77:4; 132:3;215:17;250:21 bifurcate (4) 35:21;36:5,6,14 big (14) 36:21;85:2;100:1; 146:22;147:8,11; 148:10;186:7;195:14; 199:21;252:2;265:2; 266:23;306:11 bigger (5) 23:25;27:22;100:1; 173:10;259:3 biggest (1) 202:11 Bill (2) 13:1;18:18 billion (45) 10:16;27:1;112:25; 115:15,15;140:23; 143:24;157:17;158:6, 23;161:12;171:8,8; 187:17;188:10,16; 189:3,8;191:3,12,14; 201:11,16,22,24;202:1, 4,6;203:21;209:6; 212:17;219:4;245:11; 249:1;261:13;263:23; 268:10;278:21;279:20; 283:1;289:13,14; 292:16,18,20 billion-dollar (3) 130:24;157:10;	189:17 billions (4) 192:11,13,14;299:13 bind (2) 169:1;172:3 binding (6) 33:20;169:3;203:18; 207:25;208:3;295:12 binds (1) 177:8 bit (17) 10:25;11:25;48:25; 88:12;93:15,16;96:1; 108:7;159:16;198:23; 204:11;210:3,10; 245:20;258:6;265:5; 278:2 Blackacre (3) 267:21;297:5,6 blanket (1) 201:10 blow (2) 180:9,11 blowing (1) 190:23 blows (1) 268:21 blue (1) 198:6 bluff (1) 300:14 board (4) 90:13;199:9;216:18, 19 board's (1) 203:3 body (1) 65:25 bog (1) 86:14 bogged (1) 21:6 BOKF (5) 130:14;185:23; 186:2;208:22;209:5 bond (18) 123:20;227:15; 228:5,16;230:22,24; 231:16;237:6;238:14; 239:20;240:11,24; 241:3;249:21;251:10; 261:15;263:19;287:20 bondholder (10) 178:22;179:1,3,8,13, 14;190:6;221:23; 222:9;268:2 bondholders (12) 111:9;112:21; 169:23;173:13;177:16; 184:19;185:1;186:2; 253:12;273:12,12; 303:3 bondholder's (2)	176:5;178:5 books (1) 71:11 bopping (1) 253:15 bore (1) 294:12 born (1) 272:13 both (48) 24:20;40:20;53:22; 56:12;58:6;82:11; 104:24;109:10;110:22; 124:22;125:21;128:19; 132:14;137:13;170:13; 171:7;172:6;181:15; 185:23;190:11;194:4; 195:6,7;198:25; 208:18;221:4;233:2; 234:5;239:21,22; 242:6;251:10;258:7, 11,19;266:3;275:5,7; 282:2;285:1,25;286:3; 293:8,11,13;295:25; 306:25;307:2 bottom (3) 120:24;194:16; 246:16 bought (1) 84:22 bound (3) 25:22;238:13;276:23 box (1) 258:25 bracket (1) 145:19 brand (1) 73:16 Bray (110) 167:5,6,7,9,10,15,17, 20,22;168:6,10,23; 169:1,3,5,8,11;170:4,7, 17,20,23,25;171:2,16, 18,21;172:15,18,25; 173:2,7,10,17,21; 174:3,5,8,12,16,18,22, 25;175:5,9,16,19,24; 176:1,6,8,10,12,15,18, 19;177:1,3,7,12,15,21; 178:1,3,7,11,14,17; 179:5,20;180:10,13; 181:3,12,21,23,25; 182:15,18,21,23;183:3, 7,17,23;184:1,4,7,9,12, 15,23,25;185:6,10,19; 186:9,12,20,22,25; 197:22;199:22;234:17; 242:4;250:6;253:20, 23;257:15;298:3 Bray's (1) 301:1 breach (6) 77:22;81:8,8;288:15;
--	--	---	--	---

296:9;297:8 breached (3) 81:10;85:10;90:8 breaching (2) 296:24;297:21 bread (1) 219:12 break (23) 8:24;82:9;93:23; 94:1,13;102:4;103:3; 126:5,7,17;130:8; 131:12;208:23;213:20; 214:4;220:10,22; 229:11;248:16,17; 253:8;264:19;296:21 breaks (1) 126:9 breathing (1) 13:2 breeches (1) 207:7 brethren (1) 249:25 bridge (2) 78:24;283:4 brief (15) 34:23;63:4;66:15; 71:20;74:1;126:2; 131:16,16;165:12; 214:15;243:2;266:16; 288:8;305:9;308:15 briefed (3) 85:22;201:4;308:10 briefing (7) 63:13,13;72:17,19; 89:24;305:6;309:17 briefly (7) 34:20;39:13;124:10; 137:3;154:10;193:3; 248:18 brightest (2) 181:10,13 bring (11) 67:16;72:25;95:20, 21;152:18;229:8; 245:23;250:15,16; 259:5;310:11 brings (2) 215:7;249:6 broad (4) 154:22;209:22; 210:2;282:21 broadier (1) 99:10 broke (1) 264:19 broken (2) 264:16,17 brough (1) 114:21 brought (10) 117:19;119:12; 153:7;154:13;156:1;	188:5;218:25;292:11; 307:9,11 BROWNSTEIN (25) 209:4,4,8,9;210:5,9, 11,18,23;211:1,3,7,11, 15,17,23;212:2,4,22; 213:3,6,11,13,18,19 Bruce (1) 244:4 brush (1) 154:22 bucket (1) 201:11 build (1) 265:11 building's (1) 77:3 built (2) 270:4;297:19 bunch (3) 192:10;206:13; 294:13 burden (7) 36:22;37:2,5;42:16; 50:5;83:16;147:22 burdened (1) 59:21 burdens (3) 19:1;25:10,11 burdensome (2) 14:3;66:12 burned (2) 137:18;139:10 burning (2) 51:20,20 burnt (1) 51:21 business (10) 14:7;128:18;153:5; 217:2,4,5;222:24; 292:1,1,2 busy (1) 108:7 Butte (2) 219:6;309:1 bye-bye (1) 200:25 C Cal (1) 127:17 calculated (2) 118:18;220:15 calculation (1) 136:15 calendar (11) 8:21;9:2;74:20; 116:2;132:13;157:8; 159:4,12;304:16; 305:24;306:11 calendared (1) 306:19	CALIFORNIA (26) 8:1;62:9,12;68:23; 71:13;97:11;103:15; 128:15;129:8;137:4,8, 10;140:10;162:20,21; 223:6;229:1,5;230:2, 17;232:17;264:8; 279:7;307:10,25; 309:21 Call (26) 8:3;9:2;59:24;60:7; 64:13;67:22;74:12; 75:21;112:9,12;126:2; 130:23;146:22;162:13; 167:14;168:1;191:17; 199:1;238:22;253:23; 256:1;257:18;262:24; 269:3;300:13,22 called (6) 18:18;63:23;90:15; 269:2;291:12;293:2 calling (1) 161:7 callous (1) 137:13 calls (1) 157:24 came (9) 21:10;71:12;100:17; 184:20;188:19;221:15; 225:11;243:18;249:23 Camp (8) 21:20;27:2,5;28:20; 95:7;132:2;140:3; 143:5 Campbell (1) 137:7 Campora (2) 243:16;252:10 Camporas (1) 252:22 Campos (1) 64:19 Campos's (1) 71:2 can (154) 9:10;15:7,16;16:14; 17:8;19:1;20:20;22:10; 23:23;35:16;37:6; 41:16;44:16;46:5;47:2, 22,25;50:2,5;55:7; 59:8;66:22;71:15,16, 18;72:16,18;73:17; 74:2;75:17;76:13;81:9; 82:5;86:8;87:1,2; 91:13,16;92:4,22; 96:10;97:4;98:25; 103:24;105:3,4;110:7; 113:17;116:17,22; 117:16;118:10;121:10; 123:9;127:22;141:5, 19;148:24;149:1,13, 22;150:16,18;151:14,	23,24,24;154:5,23; 156:11;165:12,17; 170:12;177:8,16,18,18; 183:1,20;184:2,5,12; 189:11;190:4,9,10,20; 191:5;192:7;193:4; 194:24;196:6,6; 199:24;200:17;209:23; 212:15;214:18;218:3; 222:3,5;223:21;226:2, 13;231:8,18;234:9; 236:18;238:1,9,14,22; 244:9,10,12,13;246:2; 248:23;253:13,18; 255:2;259:5,6;262:15; 263:8;265:11,12; 272:15;275:22;276:18; 279:10;280:22;281:5, 23;282:5,8,21;283:3,6; 284:20;286:16;288:11; 289:1;292:18;295:15; 304:21;305:21;306:5, 6,14;307:8;308:23; 309:17,20 candidate (1) 281:6 candle (2) 51:20,20 candle's (1) 51:21 candor (1) 309:9 Canyon (2) 126:25;143:25 capable (2) 110:6;230:3 capacity (2) 35:7;217:11 capital (2) 192:12;209:20 capped (1) 201:16 care (2) 74:3;256:10 careful (3) 78:19;186:18;241:16 carefully (1) 161:1 cares (1) 263:8 carried (2) 225:1;295:2 carrier (1) 11:22 carriers (1) 40:15 carrier's (1) 37:24 carry (2) 131:5;174:2 cart (2) 80:13;150:13 carve (1)	242:5 cascading (1) 35:13 case (111) 10:14,16;11:23; 13:10;14:5,5;18:25; 22:2;23:6;26:4;36:10; 37:19;38:11;39:8;40:2, 21;41:2;42:11,11,22, 25;45:20;47:6;53:14; 58:11;65:18;68:5; 70:20;71:16;75:22; 79:20;82:13;83:9,10; 85:21;87:1,23;88:14; 89:12;90:10,24;98:6; 110:6;135:1,7;150:17; 152:1,8,20;153:4; 157:16;160:11;162:3; 164:4,20;175:7; 181:11;191:11;195:19; 198:3,16;199:10; 203:6;222:14,25,25; 223:2,20,25;228:23; 233:12,18;236:24; 242:12;244:24;249:15; 252:11,12,16;253:7,11; 256:10,15;260:16; 262:13;264:5;266:5,5; 267:5,25;268:4;269:5; 274:21,22,23;275:8; 276:15;284:13;288:23; 289:24;295:15,17,19, 21;296:18;297:13,17; 299:10;300:21;301:19; 306:1 cases (36) 29:18;33:22,22,23; 41:3;59:15;63:19; 96:10,15;104:22; 105:25;106:6,9;111:1; 113:7;133:18;199:14; 203:4,5;205:14; 243:18;249:18;260:17; 266:24;268:7,8;289:6; 291:13,20;292:6,11; 294:13,25;296:12; 300:17,18 cash (22) 14:1;27:4,9;142:7, 11;188:22,22;202:2,6; 222:12,14,17,19; 225:19;261:13,16; 278:6,7,8,8,9,10 Casino's (1) 295:19 casual (1) 59:12 catastrophic (1) 137:17 categories (1) 141:15 caught (3) 79:19,20;89:25
--	---	--	---	---

causal (1) 26:10	301:11	96:17;299:1,14	143:22;144:1,3,4; 145:13;147:23,23; 148:2;149:8;152:5; 153:6;154:22,25; 165:15;188:10;197:16, 23;202:3;214:19; 221:9,14,20;222:3,20; 223:12,14,15,16; 224:16,17;225:1,7,8, 23;226:8;228:8; 233:25;237:25;241:1; 252:9;258:5;282:11, 18;289:22,23;292:2,6, 21	90:18;95:19;120:5; 142:1;197:1;221:11; 254:24;302:5;307:18; 308:6
causation (1) 140:13	change (9) 98:10;99:13;131:5; 144:24;187:7;194:19; 216:18;245:20;258:15	chosen (2) 265:16;301:17	claimants' (8) 104:9;106:13,25; 111:18;113:2;132:15; 221:12;266:22	clarifying (2) 18:23;100:15
cause (2) 289:25;299:25	changed (10) 25:16;122:6;172:24; 173:1;184:18;201:8; 216:19;237:13;293:25; 300:8	Christmas (1) 302:15	claimant's (2) 13:15;118:12	class (7) 199:25;208:8; 233:10;280:20;281:16; 297:22;307:21
caused (1) 200:19	changes (6) 96:13;121:17,18; 145:18;181:18;264:18	circle (1) 102:17	claimholder (1) 202:12	class-action (1) 198:4
causes (5) 76:7;77:1;85:4; 129:4;227:3	changing (3) 93:15;123:17;217:6	circles (1) 284:9	claiming (1) 274:22	classes (13) 104:22,25;105:1,11, 14;106:4;110:16,23; 266:23;288:21;289:20; 291:11;301:9
cautiously (2) 226:25,25	channel (3) 126:8;177:4;182:7	circling (1) 14:14	claims (118) 10:17;12:5;15:11; 17:10;20:24;26:4;27:6, 11;32:3,4,4,5;33:1; 37:16,20,23;38:9;50:2; 53:4,5;62:5,18,19,21; 63:25;64:5;65:11;66:4; 67:16;68:4;70:13; 77:22,22;80:8;89:5; 97:18;110:10,11,24; 119:6;120:10;132:16; 134:25;140:3;143:24; 148:2,8,17,20;149:2,8, 9,19;151:5;152:8,10, 11,24;154:12;157:18; 158:24;161:11;162:21; 163:2,4,7,8;169:14; 171:7,10,18,179:5,16; 182:4;186:10;189:7; 201:12,25;206:17; 208:15;222:13;224:19, 20;226:6,11,18,20,24; 227:17;248:24;249:7, 14,22,24;250:14,16; 251:9;258:11,12; 277:6;278:7;286:22; 289:19;292:6,8,15,18; 299:13;305:7,25; 308:9,11,16;309:8,9, 11,11,15	classification (1) 128:21
caveat (2) 88:19;171:9	channeled (1) 14:5	circuit (4) 294:14,16,19,25	clear (41) 18:13;19:11;20:5; 24:14;26:22;29:10; 43:11;60:1;63:6;68:5; 75:6;96:3;99:17;104:7, 8,13;105:10;107:21; 108:3;110:25;150:19; 152:21;155:10;189:13; 193:5;203:10;238:13; 243:21;254:22;260:12; 261:16;271:6;272:8; 274:2;286:17;287:16; 288:2;289:3;292:12; 299:5;302:3	
CBA (6) 68:3;69:15;72:4; 73:1,8,24	channeling (2) 49:11,22	circumstance (1) 265:16	claimant's (2) 13:15;118:12	
CECIL (6) 220:7,7,12,12,19,20	channels (1) 178:23	circumstances (9) 68:6;108:4;132:19; 155:1;157:14;222:3; 231:2;239:1,16	claimant's (2) 13:15;118:12	
Cecily (4) 131:19;152:4;221:7; 265:23	Chapter (17) 34:8,10;48:15;57:13; 105:24;110:9;150:16; 168:22;197:24;233:13; 245:4;259:11;264:5,9; 266:24;289:7;291:25	circumvent (1) 128:9	claimant's (2) 13:15;118:12	
centralized (1) 252:24	characterizes (1) 76:19	citation (1) 71:16	claimant's (2) 13:15;118:12	
cents (1) 282:15	charge (1) 8:10	citizens (1) 103:15	claimant's (2) 13:15;118:12	
certain (8) 58:22;76:16;117:24, 25;197:16;269:14; 297:9,9	check (2) 132:6;232:23	City (15) 30:11;35:22;43:1; 45:4,19,25;84:22; 130:16,19;139:11; 214:3,12;220:5,8,13	claimant's (2) 13:15;118:12	
certainly (22) 37:5;48:20;58:7; 63:9;65:6;82:19,21; 104:1;122:19;123:1; 152:17;186:7;233:4; 244:14;245:2;257:11; 262:7;274:21;294:9; 297:24;298:7;299:6	checked (1) 181:22	civil (2) 39:7;164:6	claimant's (2) 13:15;118:12	
certainty (11) 191:4;200:15; 205:12,20;233:13; 251:18;259:23;277:23; 278:16;290:4,5	cherry (1) 207:6	claim (60) 22:14;25:8,9;31:8, 13,14;32:9,10,14,19, 20;53:2;64:5,7,10,19; 65:3,13;69:14,17; 70:15;72:6;76:14,17, 22;77:23;79:5;80:9; 89:6,9;97:17;118:1,2, 5;132:8;133:2;146:14, 16,19;147:22;148:25; 149:3,9,22,24;150:7; 155:7;158:15;161:18; 171:4;222:19;225:2; 226:1;232:21;261:13; 269:12,16;307:19,25; 309:24	claimant's (2) 13:15;118:12	
cetera (1) 96:8	chess (2) 253:11;266:9	claimant (10) 76:13;106:1;145:3,5, 8;153:3;155:6;198:3; 222:1;231:6	claimant's (2) 13:15;118:12	
chair (1) 8:9	chicken (14) 180:7;185:16; 190:16;204:11;235:23, 24;236:4,6;244:10,11; 246:15,15;261:19; 262:3	claimants (91) 10:6,8,23;11:1,3,12, 19;13:5,8,25;14:24; 16:5;19:15;21:23;22:8; 42:9;106:7,9,15,17,18; 108:3;110:8,12;112:3; 113:3,4;118:9;121:14; 123:2;124:16;126:12; 127:1;131:20;134:15, 16,20,22,23;135:4; 140:24;141:18;142:6;	claimant's (2) 13:15;118:12	
Chairman (2) 126:7,8	Chico (1) 137:4	claimant (10) 76:13;106:1;145:3,5, 8;153:3;155:6;198:3; 222:1;231:6	claimant's (2) 13:15;118:12	
challenge (3) 130:19;231:10; 233:10	chiseled (1) 242:11	claimants (91) 10:6,8,23;11:1,3,12, 19;13:5,8,25;14:24; 16:5;19:15;21:23;22:8; 42:9;106:7,9,15,17,18; 108:3;110:8,12;112:3; 113:3,4;118:9;121:14; 123:2;124:16;126:12; 127:1;131:20;134:15, 16,20,22,23;135:4; 140:24;141:18;142:6;	claimant's (2) 13:15;118:12	
challenges (3) 99:21;136:6;247:13	choice (1) 179:23	claimants (91) 10:6,8,23;11:1,3,12, 19;13:5,8,25;14:24; 16:5;19:15;21:23;22:8; 42:9;106:7,9,15,17,18; 108:3;110:8,12;112:3; 113:3,4;118:9;121:14; 123:2;124:16;126:12; 127:1;131:20;134:15, 16,20,22,23;135:4; 140:24;141:18;142:6;	claimant's (2) 13:15;118:12	
chance (6) 40:16;84:12;128:3; 173:18;218:4;253:23	choices (1) 234:21	claimants (91) 10:6,8,23;11:1,3,12, 19;13:5,8,25;14:24; 16:5;19:15;21:23;22:8; 42:9;106:7,9,15,17,18; 108:3;110:8,12;112:3; 113:3,4;118:9;121:14; 123:2;124:16;126:12; 127:1;131:20;134:15, 16,20,22,23;135:4; 140:24;141:18;142:6;	claimant's (2) 13:15;118:12	
chancers (1) 186:17	choose (6) 36:17,18;67:8;68:7; 299:18,19	claimants (91) 10:6,8,23;11:1,3,12, 19;13:5,8,25;14:24; 16:5;19:15;21:23;22:8; 42:9;106:7,9,15,17,18; 108:3;110:8,12;112:3; 113:3,4;118:9;121:14; 123:2;124:16;126:12; 127:1;131:20;134:15, 16,20,22,23;135:4; 140:24;141:18;142:6;	claimant's (2) 13:15;118:12	
chances (1)	chooses (3) 30:21;70:13;80:18	claimants (91) 10:6,8,23;11:1,3,12, 19;13:5,8,25;14:24; 16:5;19:15;21:23;22:8; 42:9;106:7,9,15,17,18; 108:3;110:8,12;112:3; 113:3,4;118:9;121:14; 123:2;124:16;126:12; 127:1;131:20;134:15, 16,20,22,23;135:4; 140:24;141:18;142:6;	claimant's (2) 13:15;118:12	
	chop (1) 181:3	claimants (91) 10:6,8,23;11:1,3,12, 19;13:5,8,25;14:24; 16:5;19:15;21:23;22:8; 42:9;106:7,9,15,17,18; 108:3;110:8,12;112:3; 113:3,4;118:9;121:14; 123:2;124:16;126:12; 127:1;131:20;134:15, 16,20,22,23;135:4; 140:24;141:18;142:6;	claimant's (2) 13:15;118:12	
	chose (3)	claimants (91) 10:6,8,23;11:1,3,12, 19;13:5,8,25;14:24; 16:5;19:15;21:23;22:8; 42:9;106:7,9,15,17,18; 108:3;110:8,12;112:3; 113:3,4;118:9;121:14; 123:2;124:16;126:12; 127:1;131:20;134:15, 16,20,22,23;135:4; 140:24;141:18;142:6;	claimant's (2) 13:15;118:12	

client's (10) 32:19,20;33:1;90:24; 136:5;197:11;207:12; 252:1;280:14,23	47:14 collective (2) 62:13;72:12 colloquies (1) 264:13 colloquy (2) 294:11;300:1 combination (2) 260:7;275:5 combined (1) 93:13 comfort (1) 247:21 comforted (1) 301:18 coming (13) 12:20;27:4;31:25; 35:2;58:5;75:9;80:21; 82:23;148:2;190:2; 227:16;228:14;288:20 commenced (1) 269:18 commendable (1) 86:20 comment (10) 68:18;147:17;161:4; 10;178:7;185:10; 186:10;256:9;280:10; 295:21 commented (1) 103:24 comments (15) 30:2;66:22;131:8; 137:2;141:4;147:17; 164:8;167:20;172:16; 220:3;224:10,17; 248:22;275:15;302:8 commercial (1) 275:4 Commission (2) 128:15;229:6 commit (3) 82:8;129:1;225:25 commitment (3) 126:5;239:3;271:8 commitments (4) 203:1;268:10; 270:12;283:2 committee (62) 9:16;10:4;13:4,15; 30:14,16;33:8,9,9; 34:7,12;35:6;39:9; 43:13;104:9;106:14; 25;111:8,14,18;113:2; 121:15;123:20;128:23; 129:3,10;130:5,14; 131:20;134:21;137:14; 139:8;152:5;156:1; 160:22;163:8;167:5; 11;187:15,17;217:10; 16;221:8,12;231:15; 234:12,15;238:19,19; 249:20,21;250:1,4;	254:1;275:6;276:4; 291:4;292:2,5;300:23, 24 committees (1) 151:18 committee's (3) 110:18;163:10;173:4 common (2) 250:23;264:13 communicate (1) 92:21 communicates (2) 204:7;284:21 community (2) 139:9,10 companies (10) 18:18;23:3;27:14; 125:12;138:1;168:14; 245:18;259:11;263:8, 10 company (49) 14:8,10;16:6;18:18, 25;19:2;22:7;23:1; 24:25;25:12;28:12,17; 33:13;50:10;52:13; 55:1;58:20;59:18;60:8; 129:7;137:12;138:9, 10,12;139:17;142:13, 20;169:21;187:18; 189:1;198:25;207:2,3; 250:19,23,24;252:1,5, 7;262:6;263:15,19,20; 265:17;283:11;285:17; 293:18;298:10;301:8 company's (7) 14:11,12;23:6;53:13; 169:17;202:14;250:8 compared (3) 126:14;137:25;201:9 comparison (2) 233:7,8 compel (2) 62:20;66:7 compels (1) 175:2 compensate (1) 217:18 compensating (1) 27:21 compensation (2) 41:7;165:8 compete (2) 279:16,16 competing (11) 110:14;160:2,2; 169:9;172:10;179:11; 183:14;187:19;221:17, 19;263:25 competition (25) 172:6;180:20; 189:14,15;190:7,24; 195:14;196:21;198:17, 18,18;209:11,12;	218:25;219:22;234:23; 256:12;263:18,18,20; 291:2,3,7,8,8 competitive (14) 167:25;168:1; 169:19;170:15;172:5; 173:11;181:14;198:17; 203:5;265:8;277:25; 278:9,11;280:5 complain (4) 111:12;151:25; 234:7;291:2 complained (4) 62:8;65:8;170:21; 195:25 complaint (1) 82:4 complaints (1) 297:25 complete (2) 38:10;309:9 completed (1) 289:7 completely (7) 65:1;157:8;159:4; 178:1;225:13;232:24; 273:15 completion (1) 21:1 complex (9) 27:22;42:23;56:16, 17,19;65:16;137:7; 222:3;273:1 compliance (1) 98:7 compliant (18) 96:4,10;101:7;104:2, 16;105:17;172:2; 192:20;237:7;238:8; 249:2;250:8;255:1,13; 256:16;258:16;279:5; 284:5 complicate (1) 90:17 complicated (6) 146:7;216:16; 219:14;222:25;272:14; 300:17 complied (2) 99:12;109:6 complies (2) 99:18;238:2 complimentary (1) 170:6 comply (5) 129:7;186:18; 221:23;229:14;291:22 component (2) 262:18;263:17 components (1) 142:7 comprehensible (1) 223:23	comprehensive (5) 105:24;110:13; 289:18;291:9;292:11 compromise (3) 134:18;135:11;290:3 compromises (2) 289:17;304:2 compromising (1) 291:24 compulsory (3) 76:4,11;79:4 con (1) 83:6 concede (1) 148:16 conceded (1) 26:10 conceding (1) 76:7 conceivably (1) 222:15 concentrate (1) 263:16 concept (12) 33:4,5;34:8;51:20; 60:6;67:12;133:10; 154:24;174:7;223:24; 295:1;298:7 concepts (1) 298:18 conceptually (3) 21:18,18;168:25 concern (7) 147:19;165:14; 167:20;216:1;218:8; 256:7,12 concerned (6) 96:3;125:17;167:13; 215:9;218:1,7 concerning (1) 268:19 concerns (19) 103:23;104:17,17; 105:18;109:12;110:1; 113:12;135:1;139:4; 144:22;149:7;182:9, 10;185:24;209:22; 215:22;216:25;225:10; 246:25 concession (1) 26:18 concise (1) 204:6 conclude (1) 60:14 concluded (3) 135:22;301:6;311:7 concludes (1) 175:20 conclusion (5) 59:6;98:6;113:7; 130:3;224:1 conclusions (2)
---	---	---	--	--

226:23;302:3 concrete (1) 184:21 concurrently (1) 115:14 conditions (2) 85:11;267:2 confer (11) 91:2,6,8,25;92:6; 302:14;303:8;305:21; 306:22;309:14;310:13 conference (7) 51:14;164:13; 204:19;276:15;277:4; 286:13;287:22 conferred (1) 300:23 confidence (3) 104:14;181:4;247:25 confidences (1) 236:10 confident (2) 105:16;291:20 confidential (1) 133:4 confirm (22) 20:20;109:21; 116:17;118:10;124:1; 129:25;134:7;142:21; 150:20;174:12,18; 177:25;179:1;194:2; 200:4;207:12;223:1; 229:9;241:3;244:12; 283:11,15 confirmable (10) 101:7,18,20;105:16, 17;175:6;210:1; 212:25;228:25;239:8 confirmation (37) 16:2;100:22;110:25; 115:16;128:19;133:20; 153:12;159:24;162:25; 163:12;164:13;165:20; 179:6;207:11;215:2, 13;220:18;224:2,7; 228:12;229:2;235:3; 240:19;248:21;251:2; 252:2;253:14;267:10, 11,19;269:18;271:2; 282:25;291:14;301:12, 22;302:17 confirmed (13) 49:5,19;103:18,24; 109:5;149:12;238:9; 239:24;267:16,17; 278:18;284:8;291:22 confirming (1) 280:13 confirms (3) 24:6;25:1;138:11 confused (1) 117:6 confuses (1)	15:7 confusion (1) 107:19 congestions (1) 306:11 connection (1) 21:2 consensual (4) 198:16;199:12; 295:7,14 consensus (3) 288:21;289:11; 291:18 consenting (5) 97:17;222:1;231:6; 248:25;255:24 consequence (5) 83:16;208:7;260:14, 19,21 consequences (6) 80:19;81:7;149:12; 176:22;260:16;280:1 consider (7) 67:6;119:3;135:11; 137:15;141:14;144:23; 276:10 consideration (4) 220:15;222:21; 249:1;291:17 considerations (1) 222:22 considered (5) 68:19;96:24;126:10; 224:1;233:16 considering (2) 128:7;232:1 consistent (11) 21:17;28:19;34:3,5; 116:16;203:3;207:2; 226:5;238:20;243:13; 295:20 consistently (3) 98:4;226:8;241:13 constituencies (3) 113:8;147:10;289:24 constituency (5) 106:2;110:10;250:1, 22;269:5 constituents (6) 30:6;163:10;177:20; 235:9;297:22;301:16 constitute (2) 76:11;289:18 constitutes (1) 118:1 constraints (1) 223:8 construct (1) 84:21 constructive (3) 103:21;109:22; 268:20 consummated (1)	177:8 contemplate (3) 142:9;290:10,12 contemplated (1) 134:5 contemplates (1) 131:23 contend (2) 148:15,16 contest (3) 25:13;86:21;240:18 contested (4) 68:25;224:7,8;235:3 contesting (1) 64:25 context (7) 157:5;158:25;159:1; 162:10;191:22;255:4; 267:10 continuance (4) 30:16,21,22;89:24 continue (20) 30:11;92:10,24; 108:15;109:24;110:14; 154:8;156:11;157:5; 180:20;183:12,13; 212:23,23;213:15,15; 282:22;288:15;289:16; 300:2 continued (3) 20:8;96:14;268:11 contract (34) 77:22,22,25;78:15, 21;79:7,17;80:4,7,25; 81:6,8,9,10;82:12; 83:17,22,23;84:1,2,14; 85:9,11,12;86:2,5,6,12; 87:20;90:7;93:14; 228:18,20;296:19 contracts (2) 82:16;249:11 contractual (1) 200:12 contrary (2) 197:6;258:17 contrasting (1) 168:18 control (7) 44:10,13;183:24; 194:19;293:3;298:9,11 convenience (3) 126:6;213:21;214:5 conventional (1) 275:2 conversation (3) 140:4;300:4;310:8 conversations (3) 103:22;192:25;233:6 convey (1) 95:23 conveyed (2) 96:19;100:9 convince (3)	87:14;235:8;282:11 convinced (1) 104:7 Convincing (3) 281:14,17;282:14 co-op (2) 170:2,6 cooperative (1) 255:7 copies (1) 278:25 coproponent (1) 303:4 co-proponent (4) 187:18;193:22; 208:14,20 coproponents (1) 224:5 copy (1) 276:5 corner (1) 79:22 corporate (9) 43:1;99:12;100:5; 209:18;214:23;216:11, 21;218:10;234:7 Corporation (2) 8:8;60:8 correctly (11) 97:25;108:22; 118:10;123:25;133:19; 149:5;162:18;181:9,9; 263:13;299:3 cost (1) 110:21 COSTIN (59) 9:9;61:17,18,18,24; 62:7,12,17;63:2,9,15; 64:8,11,15,23,25;65:4, 6,12,16,20;66:5,12,19, 25;67:3,5,14,20,25; 68:2,10,12,15,18;69:1, 6,21,24;70:1,4,7,9,11, 23,25;71:6,13,19,22; 72:1,8;73:25;74:4,12, 24;75:2,5,7 costs (4) 27:15;43:25;51:8,11 counsel (71) 9:8,12;20:19;33:7; 39:7;43:12;47:10; 48:16,21;49:18;50:24; 52:17;58:25;59:14; 60:5;70:21;75:11;77:5; 84:12;91:2,6,8,25;92:6, 14;100:15;102:6; 103:10;109:11;121:15; 126:16;127:2,13; 128:13;132:15;149:16; 150:17,20;151:5,11; 166:13;167:10;168:15, 15,19,19;173:4; 178:12;185:22;186:4;	190:21;192:3;193:9; 197:16;199:24;204:19; 209:3;212:18;215:1; 217:17;235:18;241:3; 257:17;285:9,10; 297:1;301:22;302:10; 305:21;306:22;310:16 counseled (1) 37:8 counsels (1) 37:14 counsel's (1) 172:16 count (3) 42:24;168:12;258:14 counterclaim (2) 76:4,11 counterparty (1) 87:11 counterpoint (1) 156:12 counties (2) 137:6,10 counting (1) 273:3 country (2) 264:8;271:18 Counts (2) 80:5;88:7 county (5) 19:9;62:17;86:25; 137:6;219:6 couple (16) 78:13;90:2;98:24; 123:19;143:16,16; 167:23;192:8;221:16; 231:3;254:24;259:15; 288:14;293:14;294:3; 305:10 coupled (1) 91:5 coupon (1) 198:6 course (24) 15:4;17:12;33:1; 55:5;75:18;77:3;83:7; 108:18;113:11;115:17; 119:1;129:18;136:19; 160:24;166:1;192:15; 204:5;236:17;259:17; 261:15;264:2;269:13; 303:5;305:18 Court (1338) 8:3,4,6,9,14,16,18, 19,21,23;9:6,11,23,24; 10:1,10,20,22;11:4,10; 12:2,7,10,14,18,20,23, 25;13:20,23;14:14,20; 15:1,6;16:3,7,10,20,24; 17:2,4,7,11,12,17,21, 23,25;18:4,8,11,15,17, 21,23;19:5,9,17,19,24; 20:2,4,7,10,13,16,20,
--	--	---	---	---

24,25;21:3,4,17,23; 22:3,7,11,25;23:8,10, 15,17,21;24:6,11,13, 16;25:3,14;26:1,6,6; 27:7,10,16,20;28:3,5, 10,23;29:2,16,17,30;5, 15,19,21,24;31:1,9,11, 13,17,20,23;32:7,16, 18,21,23,25;33:3,6,15, 17,19;34:3,9,14,18,21, 23;35:2,5,10,14,19,24; 36:4,7,12,14,17,25; 37:5,10;38:3,6,17,25; 39:4,11,21,23,25;40:3, 7,9,11;41:9,16,19,25; 42:2,4,8,11,24;43:4,6, 23,24;44:4,6,11,12,13, 17,18,19,21,25;45:3,7, 8,13,22,24;46:3,10,12, 16,19,25;47:7,9,14,18, 22,24;48:4,9,12,17,20, 25;49:3,8,12,14,17,22; 50:8,13,15,18,20,23; 51:3,5,7,10,13,18,25; 52:7,14,16,21,23;53:8, 10,12,15,18,21;54:7,9, 13,18,22,24;55:7,9,12, 14,17,19,21,24;56:1,3, 5,10,15,18,22,24,25; 57:2,2,4,6,10,13,16,19, 21,25;58:2,59:4,10,21; 60:3,24;61:2,4,7,10,14, 16,20,25;62:11,15,18, 21,23,25;63:3,9,14,15, 17;64:7,9,12,15,22,24; 65:2,5,10,14,15,19,21, 22,23,25;66:4,10,14, 21;67:1,4,6,11,17,21; 68:1,6,8,9,11,13,16,24; 69:2,9,17,19,23,25; 70:2,5,8,10,20,21,24; 71:3,8,16,16,18,20,23, 25;72:6,7,9,14,22;73:2, 5,9,11,25;74:2,5,10,18, 22;75:1,4,6,8,15,18,23, 24;76:2,6,10,15,17,21; 77:10,12,13,14,16,19, 24;78:3,7,10,12,17; 79:1,10,14,16,20,24; 80:2,5,9,12,17,24;81:2, 4,12,14,17,22,24;82:2, 4,7,15,18,20,22,25; 83:2,18,21,25;84:5,8, 10,11,17;85:8,14,17, 20,23;86:13,17,19,24; 87:5,9;88:3,9,13,15,20, 22,23;89:2,7,10,13,15, 18,19,21,23,23;90:4, 12,18,21,23;91:3,9,13, 14,18,21;92:2,4,8,9,12, 16,18,21,22;93:3,8,12, 19,22;94:1,6,16,18,20, 23,25;95:3,8,11,20,22,	24;96:5,25;97:10,16; 98:8,12,14,16,19,22; 99:4,20;100:4,14,18; 101:5,9,22;102:15,22, 25;103:4,6,13;104:4, 24;105:3,5,9,12; 106:19,22;107:1,4,7, 12,17;108:1,5,11,17, 22;109:2,4,10,14,19; 110:19,23;111:21,24; 112:7,11,13,19;113:16, 18;114:7,10,13,17,20, 21,23;115:5,10,12,17, 20,23,24;116:5,8,10, 23;117:3,13,18,19,21, 23;118:5,7,15,20,22; 119:2,7,10,12,13,16,19, 23,25;120:2,7,12,13, 14,19,22;121:4,8,19, 23;122:5,10,21,23; 123:5,6,8,11,13,25; 124:6,9,11,13,19,23, 25;125:3,5,7,11,17,24; 130:17,25;131:25; 132:4,21,22,23;133:1, 4,7,15,17,19,23,25; 134:2,6,7,9;135:9,11, 13,15;136:13,21,25; 137:3;138:10,11,15,17, 19,23,25;139:2,12,19; 140:1,4,7,18,20,22; 141:3,7,9,12,20,25; 142:3,12,16,19,23,25; 143:3,10,12;144:6,9, 11,14,17,22;145:15,21, 23;146:3,13,16,18,22, 24;147:2,12;148:5,15, 22,24,24;149:10,23; 150:1,3,12,22;151:3,7, 10,21,23;152:2,13; 153:8,14;154:1,5,8,11, 13,15;155:9,12,13,17, 20,22,24;156:15,17,22, 24;157:2,19,22;158:2, 3,8,11,16,18,20; 159:12,15,21,23;160:1, 6,10,13,15;161:2,7,19, 23,25;162:7,11,13,17, 23;163:14,18,21,24; 164:1,11,15,24;165:1, 7,9,17,25;166:6,8,10, 12,17;167:1,4,8,12,16, 18,21,24;168:5,7,11, 24;169:2,4,6,10;170:3, 5,16,18,21,24;171:1,5, 14,17,20;172:13,16,19; 173:1,3,8,16,20,22; 174:4,6,11,15,17,21, 23;175:1,6,15,17,20, 23,25;176:4,7,9,11,13, 17,19;177:2,6,9,14,16, 22;178:2,4,10,13,16; 179:4,18;180:1,2,6,12;	181:2,4,20,22,24; 182:12,16,19,22,24; 183:4,16,18,24;184:2, 5,8,11,13,16,24;185:5, 7,14,20;186:11,16,21, 24;187:1,5,9,20;188:2, 13,16,20,24;189:2,19; 190:1;191:15,25; 192:4,7,15,21,24; 193:4,8,13,18,20,23; 194:8,10,14,22,25; 195:2,7,21,23;196:4, 14,22,24;197:5,8,19; 198:1,5,9,11,13,20; 199:2,6,18,20;200:3,6, 11,17,20,24;201:5,15; 202:20,22,24;203:13, 14;204:2,5,9,15;205:1, 5,10,22,24;206:4,16, 22;207:8,11,20,23,25; 208:3,10,16,21;209:1, 8;210:3,6,10,12,21,25; 211:2,4,8,14,16,22,24; 212:3,13;213:2,5,7,12, 18,20,24;214:8,11,14, 17,22,25;215:8,12,15, 20;216:6,10,13,15,23; 217:8,10,13,15,21; 218:8,9,15,20,23; 219:4,6,18,24;220:2,5, 9,19,21;221:1,6,9,15; 222:17;223:16,17; 225:21;226:15,20,21; 227:5,8,10,13,18,21, 25;228:3,4;229:2,4,9, 15,17,20,22;230:8,10, 23;231:9,20,22,24; 232:5,7,12;233:19,24; 234:1,15,20;235:5,11, 13,15,17,23;236:1,3,5, 8,10,15;237:8,10,12, 15,18,20;238:15,18; 239:5,7,11,18;240:11, 14,17,21;241:9,11,15, 22,25;242:14,16,21,25; 243:7,9,12,15,22,25; 244:14;245:2,17,20,23; 246:2,5,8,10,12,18,21, 23;247:10,18;248:5,7, 13;249:3,10,12;250:5, 10,16;251:5,12,16,23, 25;252:18;253:1,5,16, 22;254:2,6,12,14,17; 255:14,17,20,23,23; 256:3,23;257:1,3,5,23, 25;258:10,22,23;259:1, 12,22;260:3,20,22,24; 261:6,8,11,14,23; 262:1,16,19,21,25; 263:2,11,24;264:4,7, 12;265:19,21;266:7,9, 11,15;267:13,15,21; 268:14,16;269:20,23;	270:6,14,19,22,25; 271:4,6,11,16,24; 272:6,8,13,17,19,21, 24;273:1,6,17,20,23; 274:1,5,8,12;275:11, 17,22,24;276:1,9,12, 20,23;277:8,10,16,20; 278:4,23;279:1,11,13, 25;280:7,9,19;281:2,4, 9,12,14,16,20,23,25; 282:7,9,14,20;283:3,6, 13,15;284:4,7,9;285:5, 14,20,22,24;286:3,7,9; 287:9,11,13,15;288:4, 9,11,20;290:14,17,20, 22,25;292:23;295:9, 10;303:1,5,7,10,13,16, 19,21,23;304:1,4,7,13, 25;305:5,8,12,15,17, 19,23;306:4,9,14,16, 21,23,25;307:2,4,8,13, 17,23;308:17,19;309:4, 7,12,19,21;310:7,15, 22;311:1,3 courtroom (13) 46:7;134:13;156:3; 157:15,16;160:23; 189:5,6;248:10; 269:10;288:19;299:14, 23 courts (3) 33:25;59:16;294:19 Court's (9) 35:13;66:20;75:7; 99:11;133:21;135:1; 154:20;160:8;258:8 cover (4) 17:9;38:15;57:21; 226:17 coverage (1) 55:17 covered (4) 27:2;143:13;146:20; 246:11 CPUC (9) 104:3,6;105:18; 113:12;128:20;166:18, 19;250:20;268:19 CPUC's (5) 104:17;128:17; 182:10;259:9;283:4 craft (1) 60:5 cramdown (2) 206:1;208:1 crank (1) 232:22 Cravath (3) 157:1;303:22;308:24 crazy (1) 88:25 created (1) 265:18	creates (2) 88:12;217:18 creating (2) 73:15;127:9 creation (2) 144:20;145:1 credible (1) 268:3 credit (3) 40:5;107:13;234:4 creditor (8) 211:19;221:20; 224:4,5,7;233:22; 234:25;267:22 creditors (22) 106:9;107:23; 128:22;129:3,10; 167:11;171:23;172:4, 8;180:16;189:11; 195:20;206:15;211:23; 212:16;231:16;233:9; 249:20;267:3,7;279:7; 280:11 creditors' (8) 111:8;167:5;234:12, 15;249:20;250:1; 254:1;291:4 criminal (1) 41:1 critical (12) 17:25;100:21; 120:15;132:12;136:8; 177:19;196:7;200:14; 259:5;262:17;284:22; 292:10 criticizing (2) 100:14;224:4 cross (2) 78:24;273:3 cross-complaint (3) 79:4,23;89:17 crossroads (1) 292:10 crowd (1) 230:11 cudgel (1) 205:18 cues (1) 228:23 culpable (1) 27:21 culprit (1) 120:25 CUPC (1) 283:19 curative (1) 100:6 current (7) 52:9;89:10;116:1; 123:6;172:1;221:21,23 currently (5) 48:14;49:10;96:3; 116:6;254:25
---	---	--	---	--

cut (4) 39:1;131:16;214:2; 245:9	298:15,20	94:9;98:4;101:6;103:8; 104:21;121:17;132:14; 135:1;139:5;141:9; 144:1;148:10;151:18; 152:7;170:2,8;171:12; 173:18;177:6;178:24; 180:11;183:1;186:16; 191:9;196:9;209:15, 19:222:14;224:14; 225:5;228:9,11;230:2; 231:17;233:14,22; 235:1,18;238:7; 239:13,21;251:4; 258:3;265:7,8;267:21; 280:4,4;288:17,18,19, 20;296:10;297:4,5,7, 20;301:18	92:11;195:12;238:23; 284:2	defended (1) 32:10
cutting (2) 146:6;173:10	DE (9) 141:24;142:1,5,5,15, 17,22,24;243:17		decide (10) 35:20;36:13;46:19; 86:24;123:8;174:16; 204:21;206:8;245:6; 277:1	defending (1) 53:12
D	deadline (9) 79:6;88:4;106:6; 111:1;114:8;231:5; 270:7,8;292:20		decided (2) 13:15;301:23	defense (5) 27:15;43:25;51:7; 75:25;78:22
daily (1) 13:4	deadlines (3) 114:7;260:8;304:16	debtor/TCC (1) 197:10	deciding (2) 162:25;203:20	defer (3) 16:13;162:8;235:18
damage (13) 144:1,3;145:8,13; 146:16,18,19;148:1; 205:17,21;224:19; 232:21;307:25	deadline's (1) 79:5	debtors (58) 10:9;15:10;26:3; 29:13;41:22;52:10; 54:15;56:21;72:11; 93:4;105:25;108:24; 109:25;110:5,10; 133:8;134:16;143:21; 148:16;152:25;156:8; 173:25;185:4;188:5; 192:10,11;195:9; 196:19;197:19;199:13; 200:8;201:10;205:14; 15;208:23;211:19,21; 222:8,19;228:14,18; 229:10,12;233:8; 235:22;240:7;241:4; 261:20;270:16;271:8; 288:7,15;289:7; 296:13,16;297:1,18; 299:1	decision (47) 13:11;24:18;26:9,11, 13,14;27:23;31:2; 38:22;45:11,15;46:4,5; 59:4;62:16;63:7;70:7, 11;96:20,21;111:19; 135:8;146:4;162:10; 172:23;197:2;203:17; 204:16;219:14;222:7; 255:5;256:13;258:13; 264:24;274:7;276:9, 17,20,25;278:19; 289:9;291:16;295:10, 22,23,23;298:16	deference (1) 128:17
damaged (1) 77:4	deal (63) 12:11,12;23:1;27:8, 13;28:23,24;61:9;85:2, 5;92:19;98:25;100:15; 101:1;109:16;128:13; 129:25;139:5;149:14; 162:5,5;165:18; 172:20;179:22;186:17; 190:24;199:21;203:21; 205:25;206:10;214:18; 232:10;238:24;240:1; 241:6,14;242:7;244:8, 11,20;245:6,8,17; 246:14;247:22,23,24; 261:18,21,23;262:4; 263:7,13,14,23;266:8; 280:15,20;286:16; 290:4,6;310:3,6	debtor's (23) 29:6;76:25;123:1; 128:17;149:7,16; 221:22;229:8,17,24; 230:17,24;236:24; 238:3,21;251:11; 255:9;257:17;285:9; 291:21;292:1,9;297:20	decisions (10) 14:12;177:14; 185:15;274:17;294:15, 16,16;295:12;300:6,10	deferred (1) 35:22
damages (10) 13:14;36:24;64:17; 69:9,10;80:9;132:20; 133:13;224:18;226:9	dealing (10) 44:24;52:11,12;54:9; 58:23;128:3;163:22; 168:17,20;277:22	debtors' (27) 51:7;59:13;103:19; 104:14,15,15;105:15; 106:4;110:17;111:15; 113:5;161:10;174:13; 175:21;184:19;186:17; 188:11;190:22;194:12; 195:24;204:19;205:3; 211:1;214:2;279:3; 280:13;282:1	declaration (4) 16:23;64:20;71:2; 202:18	defining (1) 299:3
dance (1) 199:15	deals (2) 146:14;274:18		decline (1) 36:7	definition (1) 11:6
danger (1) 70:12	dealt (9) 22:22;54:19;63:6; 99:15;103:16;118:2; 126:15;167:15;215:1		deductible (13) 11:6;15:22;23:7,8, 14;24:8;33:11;50:25; 51:2;60:12,13,21,22	definitional (1) 113:25
Dario (2) 142:5;243:17	death (1) 95:7		deductibles (3) 18:8;23:4;24:21	definitions (1) 116:12
Dario's (1) 253:9	debate (1) 281:5		deem (2) 97:18,20	defy (1) 99:5
data (1) 226:23	debated (1) 222:18		deemed (8) 20:25;31:14;32:3,21, 23;33:4;64:9;309:24	defying (1) 99:9
date (17) 14:13;22:20;25:15; 30:23;35:15,18;36:1,2; 37:16;69:13;90:2;93:2; 222:13;223:2;226:22; 248:3;282:24	debates (1) 129:22	debtor's (27) 51:7;59:13;103:19; 104:14,15,15;105:15; 106:4;110:17;111:15; 113:5;161:10;174:13; 175:21;184:19;186:17; 188:11;190:22;194:12; 195:24;204:19;205:3; 211:1;214:2;279:3; 280:13;282:1	deep-pocket (2) 46:6,6	Delaware (2) 294:22,23
daughter (2) 12:22;39:12	debating (2) 22:13;54:10		defangs (1) 172:10	delay (6) 22:9;86:14;90:1; 212:1;278:16;304:21
Davey (11) 249:18,19,21,23,24; 250:4,13;251:2;254:5, 6,10	debt (3) 187:17;189:1,3		defeat (1) 66:22	delayed (2) 86:15;239:24
Davey's (1) 252:12	debtor (102) 10:18;11:19;18:6,19; 19:10;24:6;26:24;27:9, 9,21;28:1;29:2;30:2; 32:9;39:2;41:3;43:2; 44:23;46:23;47:5,9; 50:3;53:2;54:3;64:10; 65:2;68:13;74:13,13; 76:7,13,18,24;77:1,24; 78:18;79:7;80:18,18, 25;83:14,16;90:6;93:3;	debtor-shareholder (1) 177:4	defend (6) 14:4;53:14;54:25; 77:14;254:7,10	demand (6) 11:13,14;14:24; 16:18;18:25;189:22
day (32) 10:14,25;11:14; 25:17;38:15;41:1; 59:10,21;96:19; 100:10;104:2,5,6; 130:25;140:24;144:19; 148:9;155:12;159:2; 181:18;182:1;211:15; 234:16;247:11;248:11; 249:11;283:20;300:8; 302:21;306:10;308:5; 311:4		debtor-sponsored (1) 224:3	defendant (8) 45:7;46:6,6;47:5; 77:11,12;87:3;249:17	demanding (1) 230:4
days (17) 15:18;32:13;38:15; 58:19;74:3;126:3; 131:14;159:6;175:3; 181:19;238:6;260:8; 270:17;273:10;293:24;		DECEMBER (7) 8:1;49:1;89:14;	defendants (9) 31:4;36:15;40:5,20, 21;42:18,22;47:3; 75:22	demands (1) 110:6

depends (1) 200:19	dicing (1) 146:6	disapproving (1) 284:13	149:2,9,9,25;152:8; 305:25	245:11;279:20;282:15; 283:2;289:14;292:16, 18,20
deposited (1) 225:18	dictate (4) 68:6,7;158:24;194:6	disclose (1) 117:8	disputes (5) 22:1;154:6;169:12; 185:15;209:16	dollars' (2) 143:24;299:13
deposition (1) 251:2	died (1) 39:14	disclosure (21) 114:11;143:6; 149:11;151:8;175:13, 21;176:7;177:18; 179:7;197:12;219:15, 19;229:4;239:21; 269:17;270:17,22; 282:1,3;284:13,24	disregard (1) 196:16	Domato's (1) 57:2
depositions (1) 66:8	difference (6) 48:2;232:18,23; 263:8;265:2;294:23	discount (2) 178:18;299:7	diss (1) 243:9	Donato (57) 8:25;110:22;122:16, 17,23;123:9;134:4; 156:4,5,6,14,20;157:4, 13,18;159:3,12,14; 160:4,11,24;161:2,21; 162:4;182:1;183:8,10; 189:5,6;191:11,19; 203:12;204:4,6,9,12, 17;206:10;207:5,16,19, 20;236:19;240:23; 262:22;263:1,1,3; 275:23,24;277:4,11; 286:10,14;287:4; 289:21;308:12
describe (1) 272:10	different (39) 19:11;22:12,13,13; 26:9,17;28:11;40:12; 41:2;42:20,22;49:25; 50:15;52:16;69:17; 86:22;97:2;106:23; 126:13;135:24;140:10; 141:14;168:11,14,24; 182:1,23,24,25;193:11; 197:9;217:6;222:6; 240:2;259:4;264:15; 279:17,18;304:10	discovering (1) 84:15	distinguish (1) 77:21	Donato's (8) 8:23;95:8;102:5; 135:15,22;161:3,10; 276:6
described (7) 28:19;54:20;154:10; 228:10;251:7;272:23; 273:2	differently (5) 19:22;81:3;126:20, 21;241:21	discovery (10) 16:9;37:19;38:10; 43:18;57:12;65:17; 66:7;67:10;70:15; 268:12	distress (1) 69:10	done (41) 13:8;48:15;54:8; 67:22;80:8;83:10; 95:14;123:15;135:6; 137:14;145:11;151:15; 160:4;162:4,5;164:19; 169:21;181:13;189:10; 192:2;199:4;203:22; 206:13;215:24;223:2, 9;225:24;226:12; 228:8;241:14,21; 242:7,8;251:18; 254:10;263:5;265:8; 270:9;282:18;291:20; 296:11
describes (1) 154:12	difficult (12) 26:12;69:22;134:17; 140:14;146:5;152:22; 198:23;224:6;225:4; 241:18;244:2;273:1	discovery (10) 16:9;37:19;38:10; 43:18;57:12;65:17; 66:7;67:10;70:15; 268:12	distribution (3) 84:24;96:23;119:5	Donato's (8) 8:23;95:8;102:5; 135:15,22;161:3,10; 276:6
deserving (1) 291:16	dig (2) 65:18;219:11	discretion (1) 59:24	distributions (4) 10:16;106:8;113:7; 225:19	done (41) 13:8;48:15;54:8; 67:22;80:8;83:10; 95:14;123:15;135:6; 137:14;145:11;151:15; 160:4;162:4,5;164:19; 169:21;181:13;189:10; 192:2;199:4;203:22; 206:13;215:24;223:2, 9;225:24;226:12; 228:8;241:14,21; 242:7,8;251:18; 254:10;263:5;265:8; 270:9;282:18;291:20; 296:11
designed (3) 270:10;271:22;272:9	dilemma (4) 83:24;90:5;97:1; 152:3	discussion (6) 38:21;55:4;107:21; 214:22;271:14;275:18	district (7) 20:24;21:3;29:25; 134:2,2;276:21;295:9	doable (1) 101:1
desire (1) 155:6	diligent (1) 223:3	discuss (3) 123:10;127:13;310:5	Division (1) 164:6	doable (1) 101:1
desires (1) 136:17	diluted (1) 201:3	discussed (1) 219:2	doable (1) 101:1	doable (1) 101:1
destroy (1) 190:7	direction (6) 82:11;218:7,17,18, 19;220:1	discussing (1) 157:5	doable (1) 101:1	doable (1) 101:1
detail (2) 32:12;209:17	directional (1) 218:13	discussion (6) 38:21;55:4;107:21; 214:22;271:14;275:18	doable (1) 101:1	doable (1) 101:1
detailed (1) 102:15	disadvantage (1) 37:11	discussions (15) 109:23;112:18; 117:7;120:10;121:15; 152:25;153:2;163:15; 202:11;224:13;225:4; 245:5;247:17;269:1; 274:21	doable (1) 101:1	doable (1) 101:1
details (3) 10:20;297:23;304:8	disagree (6) 15:1;27:16;122:24; 167:17;273:8;278:20	disenfranchise (1) 152:14	doable (1) 101:1	doable (1) 101:1
determination (7) 66:4;104:20,22; 113:5;114:22;115:22; 142:19	disagreements (1) 244:4	disenfranchised (1) 147:20	doable (1) 101:1	doable (1) 101:1
determine (5) 62:25;63:1,3;107:23; 256:15	disagrees (1) 192:18	dishonest (1) 58:17	doable (1) 101:1	doable (1) 101:1
determined (1) 267:10	disallow (1) 148:18	disingenuous (3) 169:24;170:1;208:19	doable (1) 101:1	doable (1) 101:1
determines (1) 149:8	disappears (1) 196:20	displaced (1) 139:14	doable (1) 101:1	doable (1) 101:1
deterrent (1) 293:2	disapproval (1) 103:10	disposed (1) 165:13	doable (1) 101:1	doable (1) 101:1
detrimental (1) 215:16	disapprove (7) 136:7;139:2,5,20; 182:14,25;217:23	disposition (2) 86:13;108:6	doable (1) 101:1	doable (1) 101:1
devastating (2) 58:10;299:18		dispositive (2) 71:4,7	doable (1) 101:1	doable (1) 101:1
develop (1) 101:7		dispute (12) 11:11;22:5,6;37:17; 85:7,10,12;86:12; 106:14;117:1;169:13; 171:11	doable (1) 101:1	doable (1) 101:1
developed (1) 96:10		disputed (6)	doable (1) 101:1	doable (1) 101:1
development (3) 15:18;58:20;95:5			doable (1) 101:1	doable (1) 101:1
develops (1) 237:5			doable (1) 101:1	doable (1) 101:1
devices (2) 62:8;65:8			doable (1) 101:1	doable (1) 101:1
dialogue (2) 109:22;112:14			doable (1) 101:1	doable (1) 101:1
dice (2) 180:9;301:17			doable (1) 101:1	doable (1) 101:1

219:23;257:9;259:23; 264:24;275:20;277:5; 285:2;287:5;297:23; 299:2,25;300:13; 308:3;310:20 downside (1) 277:24 dozens (2) 47:16;233:5 draft (1) 108:5 drafted (4) 151:7;174:9;281:8; 298:2 drafting (2) 61:9;151:25 dragged (1) 77:13 dramatically (2) 264:18;293:25 draw (2) 49:17,18 drawn (4) 23:19;226:23,23; 293:7 drill (1) 71:9 drive (1) 55:21 driving (1) 199:11 drop (1) 36:14 drove (1) 28:15 due (2) 35:18;83:7 Dumas (125) 94:17,17,19,20,23; 113:20;116:17,21; 117:2;120:2,6,8,13,17; 131:11,18,19;132:1,10, 22,25;133:3,6,8,18,22, 24;134:3,8,10;135:13; 151:22,23;152:2,4,5; 154:1,10;155:11; 187:6;221:2,5,7,7; 226:19,21;227:7,9,12, 14,19,24;228:2,4; 229:3,5,16,18,21,25; 230:9,11;231:14,21,23; 232:3,6,8;233:4,21,25; 234:14,19,22;235:10, 12,14,16,18,24;236:2, 4,6,9,14;237:1,9,11,14, 16,19,24;238:17,25; 239:6,10,12;240:3,13, 15,18;241:2,10,12,17, 23;242:9,15,16;243:3; 251:7;260:11;265:22, 23;266:8,10,13;278:5, 13;279:17;289:1; 298:17;299:4;300:2;	301:25 Dumas' (1) 253:1 dummy (1) 102:19 dumped (1) 238:23 Dunn (1) 167:5 during (6) 47:21;107:21; 248:16,17;253:2; 287:22 duties (10) 112:22;113:3; 224:23;228:17;230:18; 238:20;245:8;288:15; 292:4,5 duty (14) 93:24;100:11; 135:17;203:2,3;207:3, 7;231:8;237:22; 296:10,15,24;297:8,21 dwarfed (1) 27:6 dwarfs (1) 27:11 dying (1) 225:24	E	echo (1) 164:8 economic (9) 99:4;112:23;221:18; 222:22,23;246:24; 252:19;288:22,23 economics (2) 228:7;247:14 economy (1) 72:2 edge (1) 139:10 educate (2) 63:20;194:14 educated (1) 39:15 education (1) 243:24 effect (5) 35:13;87:10;131:13; 174:20;175:7 effective (5) 150:11,11;215:10; 222:13;282:24 effectively (3) 36:1;185:1;284:19 efficiently (1) 136:2 effort (2) 83:23;251:23 efforts (4) 169:18;223:4; 302:22;311:4 eight (16) 23:23;38:14;43:21, 24;46:23;51:2,3,5,16, 19;54:5,10;59:13;97:3; 137:5,10 eight-and-a-half (1) 43:15 eighteen (1) 309:1 eight-million- (1) 56:6 eighty (1) 304:22 either (26) 35:21;41:23;50:20; 55:22;58:24;59:11; 138:17;148:15;151:7; 156:12;159:10;162:4; 194:17,23;200:8,20; 204:2;214:4,23;236:1; 244:20;245:18;263:9; 275:7;286:21;307:19 elaboration (1) 112:13 elderly (1) 132:14 elected (1) 231:6 election (1) 248:12	Electric (1) 60:8 electrical (1) 138:3 element (2) 215:22;289:24 eleven (9) 115:15;202:4,6; 222:17;259:3,3; 261:12;289:13;292:15 eliminate (1) 104:11 eliminates (2) 110:14,21 eliminating (1) 289:24 elimination (1) 233:11 Elliott-led (1) 268:2 eloquently (1) 278:6 else (39) 14:17;22:15;32:11; 43:2;53:23;54:19; 57:16;58:2;60:7;64:6; 68:22;75:4;90:22; 115:18;133:11,25; 135:19;153:17;159:18; 170:9,12;172:21; 175:3;181:5;193:10; 197:17;215:3;232:17; 234:8;250:7;254:19; 257:19;273:22;284:25; 297:3;305:1;307:4,5; 311:3 else's (2) 170:8;189:24 elsewhere (1) 21:20 Elvis (1) 192:9 emerge (2) 192:12;230:2 emergence (1) 263:16 emerges (2) 142:13;223:7 Emery (1) 254:5 emotional (1) 69:10 emphasize (1) 258:6 emphasized (2) 253:8,8 emphatic (4) 176:20;180:17; 183:10;234:17 employee (1) 72:14 employees (3) 67:13,14,17	employment (4) 64:20;65:20;71:1,23 enables (2) 233:12;239:12 encompasses (1) 113:5 encounter (1) 158:4 encountered (1) 168:21 encroachment (8) 83:24;84:16,19,19, 21,23;85:4,5 end (32) 40:14;43:13;49:5; 62:1;70:19;72:5;96:1, 18;100:9;104:2,4,6; 107:17;137:17;141:11; 154:9;159:2,7;173:19; 176:1;183:17;189:14, 15;191:14;204:13; 205:12;209:12;248:1; 256:18;264:7;268:5; 283:20 endeavored (1) 225:25 ending (1) 133:15 endless (1) 95:7 ends (7) 8:25;133:21,22; 137:19;159:24;160:8; 161:20 enforce (2) 99:25;264:20 enforced (2) 23:5;85:13 engage (1) 212:24 engaged (5) 109:21;173:13; 199:13;224:13;226:4 English (1) 29:9 enhance (2) 84:23;85:1 enhanced (1) 301:12 enhancing (1) 86:18 enormously (1) 262:5 enough (10) 25:5;47:19;130:2; 145:12;149:14;161:3; 181:4;193:7;259:9; 281:4 ensuring (1) 211:20 enter (6) 36:10;92:8,13;222:7; 231:6;289:3
---	--	----------	---	---	---

entered (5) 83:23;84:14;85:9; 94:9;304:1	Estella (1) 9:15	297:23;298:3;309:24	191:3;224:19;292:5	expeditious (2) 106:5;289:6
entertain (1) 207:10	estimate (4) 114:15;159:6; 174:14;228:24	event (13) 20:23;58:10;85:3,3; 107:22;141:17;158:2; 159:18;196:25;238:15; 239:14;251:7;264:2	excited (1) 258:9	expeditiously (1) 223:21
entire (5) 45:20;70:20;135:7; 146:12;233:17	estimated (9) 118:18;134:2,25; 158:24;161:12,18; 179:5;184:15,16	events (3) 58:18;239:16;293:24	excluded (1) 274:11	expense (2) 112:24;244:23
entities (7) 43:1,1;110:11;112:4; 153:4;163:9;189:16	estimation (77) 26:12,20;27:22;28:2, 2,56;25;110:22;114:1, 25;123:4,7;124:3,3; 128:1;129:21;130:6; 133:14;134:11;148:7, 11;152:24;157:6,11, 14;158:7;159:4,12,19; 161:15;174:22;175:11; 176:2,10,23,24;178:21; 179:6,13;183:7,11,12; 191:5,6,10,10,13; 200:10;201:19;203:8, 11;205:18;226:17; 231:4;233:11;236:20; 240:20;258:19;270:9, 16;271:1,12,19;277:6, 13;286:14,23;287:7,8, 17;289:15,20;292:14; 307:16;308:2,11,18; 309:4	eventuality (1) 290:21	exclusive (1) 170:4	experience (13) 58:8;65:22;140:9,12; 170:25;171:2;199:24; 243:18;245:7;296:13; 297:1;300:16,21
entitle (1) 89:6	et (1) 96:8	everybody (16) 90:3;133:11;157:16; 181:5,14;189:6; 190:14;191:11;203:6; 253:10;259:5;264:4, 23;273:22;299:12; 306:10	exclusivity (21) 111:20;172:23; 173:13;190:4,6;197:1, 2,3;221:16;232:4; 264:16,17,19,19;290:8, 10,15;291:16;296:21; 300:2;303:15	experienced (8) 47:10,10;100:18; 217:16,17;239:7; 247:1;299:13
entitled (9) 46:1;55:1;60:22; 107:23,25;208:10; 234:7;265:9;296:16	et al (1) 242:11	everyone (23) 8:6;33:21;43:2; 97:10;122:14;136:13; 156:3,4;157:15;189:4; 193:2;199:7;221:1; 222:4;267:5;274:21; 278:24;280:8;288:18; 289:16;299:21;311:4,5	Excuse (21) 35:10;83:14,16; 84:13;87:19;93:6; 104:25;109:11;118:15; 128:25;130:13;131:5; 132:8;155:16;158:8; 182:20;211:2;235:11; 240:24;295:6;301:8	expert (1) 287:17
entitlement (3) 118:12;132:7;197:11	estoppel (2) 70:17;71:14	everyone's (4) 43:16;213:20;214:5; 266:14	excused (3) 75:17,17;85:11	experts (1) 226:9
entry (1) 239:17	et al (1) 96:8	everywhere (2) 203:10;286:6	execution (1) 209:14	expired (1) 159:7
envision (1) 66:6	evaluate (1) 254:25	evidence (6) 25:13;38:21;202:18; 250:12;251:1;253:14	executive (12) 9:16;13:15;30:14,16; 33:8,9;34:7,12;35:6; 39:8;43:12;165:8	explain (9) 21:25;23:11;50:2; 64:3;87:14;177:1; 222:5;233:1;293:12
equal (2) 126:19;265:18	evaluated (1) 226:6	evolution (1) 295:5	executed (3) 87:20;90:9	explained (5) 23:20;59:15;157:13, 17;294:2
equation (1) 54:1	evaluation (2) 208:11,13	evolved (1) 28:6	exempt (1) 121:21	explaining (1) 234:2
equitable (1) 223:24	evaluations (1) 207:15	exact (2) 170:10;270:4	exercise (3) 100:10;298:12;301:6	explanation (3) 126:16;153:21; 221:21
equity (49) 10:9,18;27:4;134:16; 188:22,25;191:9; 199:7,8;202:14; 205:13,17,18;206:1,7; 208:1,5,6,7,7,14,14; 209:15;223:25;224:8, 13;225:5;228:14,19; 230:22;231:18;235:22; 240:7,16,24;256:17; 261:21;265:17;274:20, 23;279:15,19,20,21,22; 280:3;283:2;288:25; 301:18	evaporate (1) 235:20	exactly (22) 10:23;14:9;29:20; 46:21;48:1;77:7;79:18; 109:3;111:5,5;158:17; 160:5;198:10;199:5; 204:9;216:6;245:19; 251:22,24;274:25; 277:4;309:6	exercising (2) 245:8;298:8	explicated (1) 112:15
equivalent (3) 32:14;150:7;203:18	even (57) 15:16;19:7,8;22:22, 25,25;25:11;26:10; 27:15;32:9;36:3;37:20; 47:15;56:17;63:19,19, 21;71:14;76:23;79:2; 87:4;88:22,22;97:4,6; 99:16,17;112:25; 123:14;128:3;147:4,6, 8;148:6;149:6,11; 157:11;180:18,24; 185:2;188:2;189:21; 196:4;200:9;201:17; 235:7;246:5;247:14; 250:7;280:11;282:24; 285:11;287:19;290:14;	exacts (1) 168:12	Exhibit (2) 308:1,21	explicit (1) 92:17
especially (2) 233:9;309:14	evaporate (1) 235:20	examiner (3) 304:2,10,15	exist (1) 209:21	explicitly (1) 286:19
essence (2) 147:20;291:25	even (57) 15:16;19:7,8;22:22, 25,25;25:11;26:10; 27:15;32:9;36:3;37:20; 47:15;56:17;63:19,19, 21;71:14;76:23;79:2; 87:4;88:22,22;97:4,6; 99:16,17;112:25; 123:14;128:3;147:4,6, 8;148:6;149:6,11; 157:11;180:18,24; 185:2;188:2;189:21; 196:4;200:9;201:17; 235:7;246:5;247:14; 250:7;280:11;282:24; 285:11;287:19;290:14;	example (5) 89:5;145:18;200:7; 210:20;211:17	existence (1) 222:15	explosion (1) 55:25
essentially (8) 11:12;13:18;77:4; 168:1;169:17,20; 172:9;267:18	even (57) 15:16;19:7,8;22:22, 25,25;25:11;26:10; 27:15;32:9;36:3;37:20; 47:15;56:17;63:19,19, 21;71:14;76:23;79:2; 87:4;88:22,22;97:4,6; 99:16,17;112:25; 123:14;128:3;147:4,6, 8;148:6;149:6,11; 157:11;180:18,24; 185:2;188:2;189:21; 196:4;200:9;201:17; 235:7;246:5;247:14; 250:7;280:11;282:24; 285:11;287:19;290:14;	exceeds (1) 18:5	existing (1) 194:18	express (2) 141:19;143:18
establish (3) 29:12;206:14;286:23	even (57) 15:16;19:7,8;22:22, 25,25;25:11;26:10; 27:15;32:9;36:3;37:20; 47:15;56:17;63:19,19, 21;71:14;76:23;79:2; 87:4;88:22,22;97:4,6; 99:16,17;112:25; 123:14;128:3;147:4,6, 8;148:6;149:6,11; 157:11;180:18,24; 185:2;188:2;189:21; 196:4;200:9;201:17; 235:7;246:5;247:14; 250:7;280:11;282:24; 285:11;287:19;290:14;	except (2) 90:6;240:15	exists (4) 53:1;112:2;219:10; 278:8	expressed (2) 25:19;109:10
established (2) 15:21,21	even (57) 15:16;19:7,8;22:22, 25,25;25:11;26:10; 27:15;32:9;36:3;37:20; 47:15;56:17;63:19,19, 21;71:14;76:23;79:2; 87:4;88:22,22;97:4,6; 99:16,17;112:25; 123:14;128:3;147:4,6, 8;148:6;149:6,11; 157:11;180:18,24; 185:2;188:2;189:21; 196:4;200:9;201:17; 235:7;246:5;247:14; 250:7;280:11;282:24; 285:11;287:19;290:14;	exception (1) 169:13	exit (4) 116:1,3;268:22; 275:3	expressing (1) 180:23
estate (7) 43:16;171:13;172:4, 12;180:4;188:19; 206:25	even (57) 15:16;19:7,8;22:22, 25,25;25:11;26:10; 27:15;32:9;36:3;37:20; 47:15;56:17;63:19,19, 21;71:14;76:23;79:2; 87:4;88:22,22;97:4,6; 99:16,17;112:25; 123:14;128:3;147:4,6, 8;148:6;149:6,11; 157:11;180:18,24; 185:2;188:2;189:21; 196:4;200:9;201:17; 235:7;246:5;247:14; 250:7;280:11;282:24; 285:11;287:19;290:14;	excerpt (1) 277:15	expect (4) 65:6;122:20,22; 128:2	expression (1) 173:23
estates (3) 171:23;179:24;	even (57) 15:16;19:7,8;22:22, 25,25;25:11;26:10; 27:15;32:9;36:3;37:20; 47:15;56:17;63:19,19, 21;71:14;76:23;79:2; 87:4;88:22,22;97:4,6; 99:16,17;112:25; 123:14;128:3;147:4,6, 8;148:6;149:6,11; 157:11;180:18,24; 185:2;188:2;189:21; 196:4;200:9;201:17; 235:7;246:5;247:14; 250:7;280:11;282:24; 285:11;287:19;290:14;	excess (3)	expecting (1) 217:6	extend (2) 42:10;159:9
			expedient (3) 134:24;215:10;216:1	extended (5) 111:25;125:11,14; 132:3;160:25
			expedite (1) 106:8	extending (1) 226:22
			expedited (1) 110:25	extension (1) 46:2
				extensive (5) 105:20;157:23; 273:9;274:15;289:15
				extensively (1) 287:18

extent (22) 24:8;29:13;53:1; 81:19;82:13;97:15; 112:17;131:2;148:15; 150:17;151:4;152:16; 154:20;166:3;170:1; 222:5;260:17;274:3; 293:22;294:3,7;298:18	19:15;38:19;47:19; 96:23;140:19;156:15; 170:3;190:17,18; 193:7;223:24;264:11; 272:10;297:19	February (7) 92:25;175:13,14; 176:2;231:5;257:8; 283:10	20:239:15;243:13; 245:8;288:15;292:4,5; 296:10,15,24;297:8,21	financially (2) 230:3,3
extraordinary (1) 267:1	fairly (3) 226:8;272:22;288:8	federal (4) 107:24;127:24; 164:2,6	field (3) 66:9;246:1;281:22	financing (6) 116:1,3;265:7;268:3; 282:25;283:18
extremely (3) 69:22;222:25;223:11	fairness (2) 13:18;52:4	fee (2) 304:2,14	fifteen (4) 8:25;135:17,21; 279:3	find (5) 15:17;129:13;182:8; 198:5;206:24
eye (1) 251:1	fall (7) 15:12;33:23;179:22; 185:22;239:3;277:5; 289:25	feedback (1) 255:2	fifteen- (1) 220:21	finding (8) 100:21,21;138:11; 156:21;157:2;203:18; 207:25;213:4
F	fallback (2) 236:24;301:19	feeds (1) 147:18	fifteen-minute (1) 204:17	findings (3) 202:24;207:16;302:2
	falls (4) 133:12;200:9; 230:24;286:16	feel (3) 82:25;257:15;266:7	fifty (1) 24:2	finds (1) 138:12
face (4) 41:16;81:11;115:21; 195:11	false (1) 233:7	fees (1) 247:5	fifty-three (2) 42:21;47:16	fine (11) 9:24;16:14;89:25; 90:12,20;91:23;92:7; 94:5;99:13;136:19; 310:3
faced (1) 258:13	familiar (3) 23:12;63:18;295:11	Feist (7) 126:18;141:23; 143:1,2,5,5,11	fighting (2) 196:9;231:25	finger (2) 103:18;150:10
facilitate (2) 26:11;251:20	familiarity (1) 128:1	Feld (1) 160:21	figure (6) 58:21;86:25;95:6; 115:1;241:25;259:10	fingers (1) 273:3
facilitating (1) 27:22	families (2) 41:6;58:6	Feldman (57) 113:4;124:8,10,12, 15,15,20,23,24;125:2, 4,6,9,14,23;168:12; 190:20;202:3;257:20, 21,24;258:1,4,4,23; 259:2,21,24;260:16,21, 23;261:5,7,10,12,15, 25;262:3,17,20,24; 263:1,10,12,25;264:5, 7,10;265:4,19,20,24; 274:25;277:17;292:17; 293:19;301:24	figuring (2) 163:6;198:4	finish (5) 9:1;172:8;204:24; 228:2;270:12
facing (3) 31:6;87:11;231:3	family (4) 38:13;58:11;75:21; 86:21	Feldman's (2) 104:19;289:13	file (24) 44:16;62:19,23;65:2; 74:1;76:22;79:23; 80:19;82:8,12;83:7; 88:2,19;89:17,20; 91:16;93:4;104:2; 126:12;150:15;162:22; 190:4;204:8;270:16	finished (2) 8:24;275:15
fact (44) 10:24;35:3;42:16; 43:10;62:17;64:4; 96:15,22;99:16; 103:20;104:8;109:24; 130:1;132:19;158:21; 161:13;163:8;190:24; 192:16;201:18;202:4; 203:11;206:24;219:21, 25;223:11;238:5; 242:4;246:1;249:8; 252:10;258:14;267:9; 272:4;275:2;277:5; 278:14;279:19;285:9; 294:13;297:19;301:14, 18;303:7	fan (1) 293:2	fellow (1) 247:3	filed (44) 13:19;28:12,17; 29:14,23;31:16;32:13; 40:13;52:5;63:22;64:5, 7;72:20;73:5;75:22; 76:14;78:4,18,21;83:8; 97:12;111:14;112:5; 126:3;130:21;150:6; 151:19;153:18;154:15; 164:8,12,14,17;166:23; 205:3;220:16;255:21; 269:17;276:5;277:21; 292:6;293:19,19; 309:23	fire (59) 9:3;10:8;12:22;13:2, 14;22:11;27:5,24; 28:13;47:15;49:6; 53:22;55:1,21,24;58:9; 62:4;97:17,18;101:2; 106:1,7;110:10; 118:17;127:5;130:25; 134:1;137:7,8,9,11; 138:2,6;139:10;140:3, 24;141:18;142:6; 143:6,22,23;147:23; 149:8;163:3,8;192:14, 17;199:20;215:3,7; 220:14;222:1;231:6; 232:16;307:20,25; 308:9;309:1,24
factor (2) 36:20;68:19	fans (1) 297:13	Feldman's (2) 104:19;289:13	files (3) 91:15;264:9;284:11	fired (2) 64:21;68:20
factored (1) 277:24	far (10) 43:3;105:12;120:17; 125:17;162:25;172:9; 181:14;192:5;261:4; 276:15	felt (4) 34:12;132:14; 244:25;304:20	filing (5) 78:20;143:7;252:22; 270:7,8	fire-related (1) 162:21
factors (3) 67:5;140:16;244:3	fashion (1) 206:17	FEMA (3) 127:23,23;307:19	filled (1) 143:19	fires (8) 27:3;28:20;250:21; 308:1,20,22,25;309:1
facts (6) 111:16,16;192:11; 224:6;297:9,9	fast (2) 53:3;76:3	fend (1) 24:7	final (4) 68:18;114:22;131:7; 186:9	firm (2) 162:19;304:20
factual (1) 203:18	faster (1) 228:12	few (17) 8:25;12:22;32:13; 47:13;58:19;94:22; 126:3;137:2;187:20; 190:9;205:24;213:21; 238:6;293:24;294:22; 298:15,20	finally (3) 71:10;127:12;247:25	firms (3) 224:22,25;228:21
fail (1) 251:19	fatal (1) 178:5	fiduciaries (2) 225:7;291:15	financial (9) 14:11;96:7;168:13; 188:8;199:15,23; 222:10;230:20;245:12	first (62) 8:9,13;9:5,10,22; 13:21;15:9,20;25:5; 27:17,25;35:4;41:12; 42:7;51:8;52:7;58:4;
failed (1) 20:21	fate (1) 15:17	fiduciary (37) 11:20,21,21;96:21; 100:11;112:22;113:3; 134:21;180:2,5; 198:22,24;203:2,3; 207:2,7;224:23; 228:17;230:17;231:8; 237:2,7,22,25;238:20,		
fails (4) 20:14,23;221:23; 251:6	fault (2) 42:19;296:23			
fair (14)	favor (8) 80:5;172:10;177:11; 179:25;195:6;201:17; 282:5;296:19			
	favorable (2) 296:18;303:25			
	feasibility (2) 100:21;165:22			
	feasible (5) 134:9;138:12; 192:20;283:7,8			
	Feather (2) 126:25;143:25			

72:10;25;75:11;81:20; 82:12;97:1;111:25; 120:20;135:18;137:21; 143:21;144:21,23; 145:17;152:6;154:3; 172:23;175:1;178:19; 179:2;184:18;187:25; 196:5;197:24;204:17; 221:11;239:13;242:20; 247:8;248:24;252:11; 257:8;258:20;260:9; 264:1,1;268:24;278:5; 285:8;287:4;294:5; 299:10;300:3;303:24; 306:1 fish (4) 100:1,1,3,4 five (3) 73:22;278:25;279:20 five-day (1) 57:11 fix (3) 210:8,17;212:14 fixed (3) 121:1;210:17;212:15 fixes (1) 115:14 fixing (1) 212:20 flagged (1) 169:14 flatly (1) 10:7 flawed (1) 295:5 flexibility (3) 145:16,18;275:3 flip (2) 31:1;87:16 float (2) 14:12;27:14 floating (2) 184:17;269:10 floor (1) 135:22 flower (1) 243:21 fly (1) 90:14 focus (6) 27:18;153:10; 197:23;257:1,16;310:6 focused (5) 167:22,23;250:24; 294:6;296:3 focuses (1) 128:23 focusing (6) 130:17;182:19; 250:7;255:17;298:16; 309:10 fold (1) 236:18	folks (6) 27:12;57:7;196:7; 229:17,23;247:25 follow (2) 235:17;308:4 followed (2) 89:22;100:22 following (5) 74:11;97:7;101:24; 201:15;284:10 follows (1) 285:3 follow-up (1) 301:21 football (2) 246:1;297:13 footnote (1) 279:4 forbid (1) 118:23 force (3) 174:20;175:7;203:7 forced (2) 70:14;289:2 forces (1) 191:9 forcing (1) 142:10 foreclose (1) 104:1 foregoing (1) 130:3 forever (1) 123:7 forget (3) 24:21;28:1;295:18 form (4) 87:12;121:16;172:2; 275:7 formal (2) 226:17;305:10 formality (9) 115:2,4;116:18; 269:24;270:1,3,3; 271:12,22 formulas (1) 22:15 formulating (2) 151:12;212:25 formulation (3) 209:24;212:6;213:15 forth (3) 71:1;185:25;244:8 fortunately (2) 224:24;225:3 forum (6) 67:7,8;68:6,7;69:18; 87:18 forward (59) 13:17,19;22:19;31:3; 33:13;35:21;36:15; 37:6;53:3;59:3,5; 60:14;77:1;83:12;85:6;	96:21;103:20;104:14, 23;105:15;110:7,24; 113:13;123:12;135:7; 153:25;163:22;171:3; 176:24;183:12;193:15; 211:19;215:11;219:8; 221:17;230:18;238:14; 244:12;245:6;248:1; 253:13;258:24,25; 259:7;261:25;262:4, 11,12,13;266:23; 275:8;277:25;285:11; 287:25;288:22;291:23; 300:1;306:20;309:15 found (3) 22:20;73:17;94:9 foundation (1) 275:8 four (6) 15:18;112:25; 139:15;159:6;181:19; 278:25 fourteen (1) 137:23 Fox (1) 209:5 frame (2) 128:2;224:9 framed (1) 38:23 framework (1) 248:2 FRANCISCO (4) 8:1;132:22;133:14; 160:8 Frank (1) 242:24 frankly (12) 58:13;98:22;115:3; 143:18;169:23,25; 256:12;257:8;263:22; 267:5;296:22;300:10 frankness (1) 169:25 free (4) 107:3;140:21; 238:21;303:4 frequently (2) 33:24;264:17 Friday (15) 30:11;35:15;36:3; 59:23;108:19;121:17; 125:4,5,7,9;159:9,10; 259:25;260:9;306:19 front (7) 161:21;203:11; 204:12;222:19;258:10; 286:18;287:6 frustrations (1) 19:6 fry (1) 100:1 fulfill (1)	97:22 fulfilling (1) 228:17 full (7) 111:11;195:16,17; 201:19;202:3;273:10; 292:9 fully (8) 105:22;106:16; 110:9;117:17;144:3; 198:16;250:14;291:21 function (2) 126:24;127:10 functioning (1) 131:3 fund (8) 56:7;192:14,17; 217:18;223:10;232:21; 289:7;291:23 fundamental (3) 111:19;265:11; 279:18 fundamentally (4) 19:15;198:14; 208:13;279:23 funds (1) 119:6 further (25) 20:25;29:4;36:3; 39:1;68:17;71:20; 74:17;86:14;89:23; 91:4;93:4;100:23; 116:22;119:2;120:13; 129:2;130:9;131:10; 138:12;142:20;145:20; 147:9;159:6;203:22; 206:23 future (8) 25:16;129:7;230:21, 23;239:4;301:24; 302:14,16	gathering (1) 56:13 gave (8) 11:18;56:9;102:3; 104:11;229:21;242:17; 290:3;298:22 Gavin (2) 95:17;254:21 gearing (1) 54:3 general (3) 234:22;308:8;309:8 generally (1) 154:8 General's (2) 162:20;307:10 generating (1) 274:14 generis (1) 300:21 genie (1) 258:25 gentleman (3) 9:6;214:11;253:24 genuinely (1) 278:19 George (1) 75:23 gets (16) 21:11;88:22,22; 95:14;107:14;137:18; 140:14;146:5;162:8; 200:8;234:10;246:14; 263:3;264:17;269:18; 307:16 GHETALDI (9) 141:24;142:1,5,6,15, 17,22,24;243:17 Ghost (68) 8:12;9:3,10,17;10:6, 7,13,19,23;11:1,11; 12:16;13:4,8,14,25; 14:24;15:9,11,14,16; 16:5,11;18:1,21;4,12, 21;22:8,11,18,19;23:1, 19;24:2,7,17;26:4; 27:24;28:1,13,14,18; 32:5;35:6;37:15;38:8; 39:8,14;40:10;49:6; 50:11;51:15,22;52:1, 17;53:5;54:1,19;55:1, 5;58:2,8,22,23;59:3,9; 123:15;223:14 gigantic (1) 138:4 given (10) 9:19;15:17;43:5,8; 159:4;179:23;247:18; 279:22;293:20;308:13 giving (5) 37:15;173:18;201:8; 228:24;246:18 glad (4)
G				
gag (5) 177:10;196:9; 229:15;284:19,20 gain (1) 225:18 gamble (2) 173:8,10 game (2) 204:10;297:15 games (1) 246:15 gander (1) 242:8 gaps (1) 143:19 Garrison (1) 166:22 Gas (3) 60:8;84:24;85:1				

29:16;96:25;145:6; 207:10 glean (1) 277:8 global (8) 105:24;111:6;113:5; 212:25;213:16;288:21; 291:17,24 goal (5) 257:12;260:24,25; 299:21;301:11 goals (2) 105:23;223:22 God (2) 118:22;153:18 goes (27) 19:8;22:16,19;27:8; 33:12;50:9;87:10; 118:15;119:11;125:22; 129:24;142:13;160:1, 11;176:24;193:15; 198:7;203:11;206:7; 237:23;240:5;258:7, 24;262:4;296:1;299:9; 307:15 Good (65) 8:6,7;9:14,15;10:1,2, 25;11:20;12:18,25; 17:15,16,19;44:7,8; 48:4;53:21,25;54:2; 74:21;75:13,14,20; 93:19;98:18;107:13; 120:17;127:6,12; 136:13;139:24;142:13; 167:9;171:21,21,22; 181:6;182:3,4,5,6; 198:18,18;199:24; 203:23;209:4,11; 210:16;218:25;219:16; 221:7;231:24;233:2,4; 234:24;242:7,7;249:6; 252:23,24;276:7; 296:8,22;303:18; 310:25 goose (2) 242:7,10 Gordon (1) 35:12 gotcha (2) 153:16;257:13 Gotshal (2) 41:21;288:7 govern (1) 147:11 governance (8) 96:7;99:12;100:5; 163:1,6,12;209:18; 230:3 governed (3) 63:24;65:23;294:14 government (5) 153:4;163:2,9;164:2; 180:25	governmental (4) 53:23;130:22; 148:10;214:19 government's (1) 110:6 Governor (44) 95:17,18;96:2,20; 98:2;99:5,6,9,24; 100:11,14,25;101:19; 103:19;109:2,10; 113:12;137:22;172:1, 10;180:18,19,20; 192:2;195:19;199:9; 230:4;231:15;238:5, 11;247:24;250:19; 253:12;254:21;255:2; 257:5;259:7;263:20; 268:19;279:2;283:19; 293:18;298:22,22 governor's (60) 49:3;58:19;95:4,11; 97:8,23;99:10; 100:25;101:10;103:9, 9,22;104:12,16;108:19, 25;109:22,24;112:5; 127:20;129:9;131:8; 172:13;182:9;192:1,3, 5;193:1;195:11; 209:16;213:25;214:25; 216:6,7,8,9;221:21,22; 229:7,13;231:1,11; 247:14;254:18;256:4, 5,9,10;259:6,8;260:7; 279:1,2;284:2;285:6, 15;291:5;300:25;301:4 grams (1) 238:6 grant (19) 15:19;25:15,18;26:7; 30:19;33:25;40:17; 41:6,19;52:23;54:19; 56:8;59:25;61:22;79:3; 90:5,11;99:23;284:22 granted (15) 13:13;20:25;22:18; 26:19;30:15;33:10; 36:1;50:9;52:24;56:19; 81:3;83:15;87:5;88:20; 114:3 granting (2) 19:8;60:3 granular (2) 120:9,9 Great (11) 8:20;74:4;79:6; 88:11;120:18;187:22; 206:3,5;233:12; 267:12;275:8 greater (3) 24:25;25:11;37:13 greatly (1) 134:14 greeted (1)	241:17 Greg (1) 165:4 Gregory (1) 167:10 grievance (18) 63:11;67:1,1,4,11, 24;68:8;69:3,4,11,13; 70:5,12,14,19;72:4,20; 73:20 grievances (2) 67:13,14 grieved (1) 71:15 grouchy (3) 241:7,13,13 ground (4) 13:24;90:19;127:9; 137:18 group (15) 101:3;108:9;117:1; 124:16;131:3;139:4; 177:22;235:7;243:14; 258:5;263:6;265:10, 14,16;268:2 group's (1) 258:12 GSA (1) 293:1 guarantee (3) 201:18,21;252:21 guess (16) 26:8;61:20;116:13; 146:4;149:3;185:2; 212:22;213:7;216:17; 257:18;271:24,25; 294:15;297:15;305:20; 307:17 guessed (2) 292:7,8 guidance (4) 230:1;238:10;246:3, 17 guiding (1) 299:8 Gump (4) 155:25;160:21; 187:14;276:3 guy (2) 230:9;281:2 guys (2) 284:18;306:16 H half (19) 102:18;115:15; 139:17;140:23;157:17; 158:6,23;188:16,22,22, 22;189:8;202:1,2; 258:20;286:24;287:6; 289:12;292:20 hand (5)	20:19;30:10;133:1; 161:10;266:11 handful (1) 308:22 handle (2) 16:9;239:13 handled (2) 65:14,18 handling (1) 94:19 hands (3) 22:5;70:18;145:2 happen (31) 14:2;26:17;42:13; 46:18;114:3,5;122:14; 131:12;138:22;139:25; 160:3;173:20,22,23; 175:3,18;181:18; 183:11,18;187:18; 190:19;236:11,13; 239:3;268:13,15; 271:10;272:1;287:23, 24,25 happened (23) 28:13,13;37:11; 40:21;59:7;94:8;170:8; 183:9,19;191:6; 193:10;203:24;204:21; 245:3;253:5;259:17; 260:8;267:25;273:23; 293:15;298:14,20,25 happening (4) 44:17,17;115:20; 271:9 happens (43) 15:23,23,24;16:10; 43:22;44:12;49:5; 69:19,20;70:3;76:22; 80:6,20;98:10;117:10; 118:22;129:23;133:20; 137:17;138:10,20; 139:20,21,22;161:17; 172:19;178:4;179:22; 185:21;193:13;203:10; 259:19;260:13;265:24; 269:16,18;277:1; 283:11,21,23;287:6; 298:25;307:19 happy (15) 90:3;102:12;109:13; 111:9;120:10;171:3; 187:13;214:7,9;234:8; 247:24;256:17;278:23; 302:18;311:5 hard (12) 46:25;56:25;62:3; 177:24;198:4;203:15; 210:1;254:24;274:17, 17;302:21;311:4 harden (1) 279:9 hard-fought (1) 134:17	hardly (1) 251:19 Hardwoods (1) 294:17 harm (3) 68:19;205:14,15 hate (2) 171:14;234:8 Hauer (1) 160:21 head (4) 77:7;188:23;277:6; 284:15 headed (1) 218:17 heading (1) 218:7 heads (1) 89:7 heads-up (1) 94:6 health (3) 68:21;130:18;143:24 hear (31) 28:24;29:2;39:1; 62:18;89:16;102:1,13; 113:19;123:20;128:13; 129:1,11;134:11; 136:6;140:4;160:16; 185:5;208:24;213:25; 220:10,22;243:1; 247:11;254:17,18; 257:19;258:1,2; 273:14;278:20;285:24 heard (56) 9:7,10,12;29:4; 34:18;39:1;41:12;42:1; 48:21;49:14;50:24; 58:2;81:20;84:3;87:6; 102:7;103:10;121:6; 125:19;126:17,22; 135:25;136:23;151:24; 162:25;180:25;191:11; 195:12;199:22;202:3; 217:15,22;219:5,7; 220:6;222:17;233:15; 240:16;242:3;247:23, 23;248:10;253:25; 254:3,19;257:18,20,21; 258:1;268:20;271:2,6, 8;275:17;296:8;304:18 hearing (51) 16:2;30:17;35:16; 44:25;66:9;87:25; 89:11,12,15;92:3,10; 97:3;102:5;109:1; 114:12;116:3;120:15; 122:14;134:15;135:20, 22;156:9;159:4; 164:13;165:6,8; 190:21;195:15;203:16, 20;204:17;209:13; 229:2,4;254:9;257:8;
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263:4;266:19,20; 267:10;268:11;269:18, 19;271:3,12;276:6; 280:10;282:25;301:21; 302:16;304:3 hearings (7) 95:7;197:1;204:3; 267:11;299:10;304:15; 306:7 hearing's (1) 276:1 Hearn (18) 8:13;9:9;61:15,16, 19;62:1,9;65:7;66:9; 67:9;68:20;69:3,13,21; 71:9,10;72:4;75:10 Hearns (1) 60:18 Hearn's (4) 62:4,18;63:6;64:12 heart (3) 135:2;146:10;190:15 hearts (1) 190:16 heavy (2) 101:16;164:19 hedge (1) 195:6 help (9) 10:9;15:7;17:22; 26:8;71:11;106:12; 107:10;111:4;151:23 helped (1) 232:8 helpful (4) 17:20;91:12;147:8; 191:23 helping (1) 46:22 helps (2) 63:7;252:7 Here's (6) 14:2;21:9;97:1; 126:1,11;139:16 hesitant (1) 297:12 Hey (3) 120:19;148:2;195:2 hidden (1) 250:6 high (2) 96:13;134:14 higher (1) 278:11 highly (4) 173:15;178:11,17; 180:5 history (5) 15:9;59:8;137:8; 263:22;266:4 hit (2) 77:6;79:6 hoc (17)	110:18;111:13; 112:21;121:15;123:20; 124:16;130:5,9,14; 156:1;160:22;177:16; 187:14;239:20;258:5; 276:3;278:18 hocs (1) 291:6 Hold (7) 17:1;91:24;148:11; 156:18;187:5;196:1; 253:22 holder (7) 228:16;237:6; 238:14;240:24;249:21; 251:10;263:19 holders (20) 222:20;223:25; 224:8,14;225:5; 227:15;228:6,15,19; 230:20,22;231:16,18; 240:7,12,16,25;261:15; 274:20;287:20 holders' (4) 160:22;230:24; 239:20;241:3 holding (2) 42:17;166:13 holds (1) 187:17 holdup (1) 42:15 Holiday (1) 311:5 holidays (1) 306:9 home (3) 153:18;161:8;183:25 homes (1) 299:17 homework (2) 135:14;286:5 honest (6) 58:13,14,14,16; 78:24;181:15 Honor (348) 8:7;9:15,18,25;10:2, 5,19;11:15,18;12:8,13; 13:7;14:12;17:3,20; 18:24;20:1,5;25:4; 26:2,21,23;28:8;29:1,8, 24;30:14;31:5,15;34:7, 17,20;35:1,23;38:24; 39:6,9,18;41:5,22; 48:7;49:16;50:2,22; 52:3;61:12,18;62:7; 67:8;74:4;75:5,14,16, 17,20;76:1,12;77:6; 78:25;82:1,10,19;83:4; 84:3;86:1;88:11;90:20; 91:7,11,17,23,24; 92:11,18;93:1,18,21; 94:5,17;95:1,25;98:1,	3;99:19;100:8,12; 101:21;102:11;103:17; 104:7,8,13,18;105:10, 19,22,23;106:10; 107:10,21;110:8,14; 111:2,10,19;112:20; 113:2,9;119:3;120:8; 121:6,13;122:3,9; 123:3;124:5,8,18; 125:4,10,15,23;131:18; 132:10;134:3;136:24; 138:18,21;139:23; 140:6;141:8,11,16,24, 24;142:5,15;143:2,11, 15,18;144:8,16;146:8, 15;147:16;148:14; 152:4;153:23;154:20; 155:16,18;156:5,13,16, 20,25;158:10,17,19; 159:9,22;160:5,12,20, 23;161:1,9,19;162:6, 19,24;163:17,25;164:7, 21,23;165:4,5,12; 166:23;167:7,9; 170:17;174:5,12; 176:15;186:9,25; 187:3,16,22;189:4; 190:3,9,13;191:1,7,22; 192:10,20;193:7; 195:3,13;198:12,14,21, 22;199:11;200:1,18; 202:8,21;203:2,8,25; 204:24;208:12,25; 210:9;212:12;213:19; 215:6;216:12;220:7, 12;221:7,11;222:25; 227:15;229:19;230:5, 12;231:14;235:25; 237:9;241:2,19; 242:15,22;245:19; 246:14;248:6,18; 249:6;250:22;251:15; 253:6,19;254:1,4,13, 20,22;255:4,11;256:2, 13,21;257:14,22;258:4, 5,13,18;259:4;261:5, 17;263:10;264:3,10; 265:18,23,24;266:14, 16;267:9,24;268:3; 270:2,4;271:7,21; 273:12,15;274:19; 275:5,13,20;276:5,11, 19,25;277:7,19,22; 278:5,7,13,17,22,24; 279:5;280:2,17;281:7, 21;282:6,16,22,23; 283:9,17,24;285:13; 286:6,12;287:14,20; 288:3,6,16,17;289:1,4; 290:7;291:1,14,21,24; 292:8,10;302:24; 303:15,18;304:24; 305:4,6;307:7;308:7,	14,24;309:6;310:9,19, 25;311:2,6 Honorable (2) 8:5;241:7 honored (1) 118:16 honors (1) 221:2 Honor's (8) 147:17;157:6; 162:10;182:10;223:3; 244:9;248:20;268:21 hoop (1) 285:8 hoops (2) 283:19;285:6 hope (20) 37:5;40:16;133:12; 134:10;140:15;141:5; 152:21;158:1;160:17; 172:6;179:11;194:1; 213:16;226:9,10,12; 230:23;238:6;302:3; 303:3 hopeful (1) 134:6 hopefully (9) 24:22;135:12; 168:20;196:24;197:24; 225:17;232:22;282:18; 295:13 hopes (1) 157:16 hoping (2) 95:20;304:5 horror (1) 58:5 horse (2) 80:14;150:14 Hostetler (3) 10:3;131:19;221:8 hot (1) 292:25 Hotel (1) 295:11 hotly (1) 22:1 hour (4) 123:17;191:19; 263:4;294:12 hours (9) 38:13,15;67:23; 94:22;97:3;168:8; 191:10;192:8;241:18 house (1) 64:20 housekeeping (2) 303:20;304:1 housing (1) 223:17 huge (1) 181:8 Huh (1)	169:2 human (2) 46:4;66:8 humanitarian (3) 126:5,7,9 humble (2) 248:2;285:15 hundred (6) 24:1;38:13;100:7; 125:12;216:17;263:7 hundreds (3) 152:11;233:5;247:3 hurdles (1) 209:15 hurt (1) 199:25 hypocrisy (2) 250:2;254:15 hypothetical (3) 53:6,19;261:10 hypotheticals (1) 297:12 <hr/> I <hr/> IBEW (3) 72:12,12,17 idea (11) 26:24;121:21; 132:11;140:9;209:23; 253:18;267:12;268:2; 269:9;270:2;271:7 ideal (1) 222:11 identical (2) 168:3,9 identified (3) 29:5;129:3;298:19 identify (1) 161:14 ignore (2) 195:15;234:12 ignores (2) 111:16;287:24 ignoring (2) 205:13;234:13 ill (1) 299:23 illustrate (1) 236:16 imagine (6) 58:5;177:24;203:16; 247:18;250:11;277:20 immediate (5) 119:8;122:12; 132:11;175:11;197:14 immediately (2) 37:14;223:23 immovable (2) 244:17,17 impact (6) 54:15;56:12;58:21; 188:15;197:14;251:4
--	--	---	--	--

impacting (1) 303:14	66:23;310:22	indeed (3) 30:8;90:15;247:17	insist (2) 190:23;301:10	70:2;100:11;104:1; 125:20;150:15;248:21; 302:2
impacts (1) 97:4	imposing (1) 72:11	indenture (1) 209:5	insistence (1) 268:1	intended (4) 84:21;152:13;226:4, 5
impair (1) 252:4	impossible (1) 66:6	independent (3) 83:22;86:6;215:8	insisting (1) 279:15	intensity (1) 293:1
impaired (33) 104:21;25;105:11, 14;106:4;110:16; 189:11;195:20;208:8; 211:5,9,12;219:17,23; 233:10;256:18,23,24; 257:2,3;266:23;269:5; 280:20;281:16;288:21; 289:19;291:11;297:22; 301:9;305:7,17;306:4, 4	impressions (1) 248:22	indicate (2) 23:22;230:15	insolvency (13) 115:21;129:12,13, 14,14;167:14,15; 173:24;174:7;200:13, 15,19;298:4	intent (1) 152:21
	impressive (1) 230:9	indicated (5) 64:15;78:15;112:4; 136:3;137:16	insolvent (4) 129:18;200:21; 245:24;262:5	intention (6) 135:3,20,23;271:21, 22;302:10
	improve (1) 238:8	indicates (1) 71:14	inspectors (1) 252:10	intentionally (1) 272:9
	improvement (1) 229:8	indication (3) 144:2;278:17;284:1	instead (1) 78:19	intents (1) 169:21
	improvements (1) 228:13	indications (1) 238:13	institutions (3) 168:13;199:23; 222:10	interest (27) 14:23;107:24;108:6; 113:10;130:10;135:6; 171:13,23;172:4,12; 179:24;180:4,15; 188:14,18;195:25; 200:25;206:25;211:5, 20;212:17;274:23; 283:22;288:23;289:4; 296:19,20
impairment (4) 107:20;211:8,13; 282:23	in- (1) 64:19	indiscernible (1) 184:5	instruct (1) 177:12	interesting (6) 77:20;98:19;149:9; 248:15;269:1;294:24
impatient (1) 216:16	inability (1) 105:6	individual (14) 118:9,24;152:11; 153:5;154:12;156:18; 212:16;224:23;225:14, 23;261:17;280:21,22; 282:11	instructions (1) 34:6	interests (2) 107:22;230:16
impede (1) 251:21	inaccurate (1) 189:12	individually (2) 217:13;225:6	instruments (1) 163:16	interpret (2) 88:24;241:4
impeded (1) 301:12	inappropriate (3) 273:16;288:17,20	individuals (8) 43:4;119:7;133:10; 135:10;226:22;233:6; 243:18;281:14	insurance (71) 11:2,5,22;12:4,6; 13:17;14:8,10,10,12, 16,25;15:22;16:6,12, 16,25;17:9;18:3,18,25; 19:2,14;22:7;23:3; 24:2,9,21;25:12;26:16, 23,24;27:2,3,6,8,11,13, 14,18;28:9,16;29:7,14; 33:11,24;34:11;37:24; 39:5,22;40:15;43:6,17; 49:20,24;50:4,24; 52:13;53:1;55:14;56:7; 59:17;60:11,13; 125:12;146:20;168:14; 250:13;251:3;263:7,10	interpreting (1) 101:10
impediment (2) 45:14,18	inasmuch (1) 13:16	infirmities (1) 221:22		interrogatories (1) 40:22
impediments (1) 179:9	incapacitated (1) 13:3	influence (4) 45:10;125:20;141:5; 205:13		interrogatory (1) 14:4
imperative (1) 292:12	incentive (2) 221:25;222:1	influenced (2) 210:15;298:18		interrupt (1) 120:4
imperfect (2) 224:11,11	inclined (6) 40:16;63:10;90:5; 131:4;154:21;203:19	information (7) 41:4;143:7;191:17; 199:16;219:13;255:8; 278:23	insured (1) 250:14	into (63) 15:15;22:16;27:5; 28:15;33:12;37:4,9; 38:20;55:21;65:18; 72:16,19;77:13;83:13, 23;84:14;85:9;92:8; 94:9;95:7;117:25; 120:15;130:22;131:14; 133:13;135:12;139:10; 141:14;145:22;147:19; 155:4;188:19;200:10; 201:3;202:1;215:12, 18;219:11;222:6,7,21; 223:16;230:20,22; 231:7,21;238:23; 241:8;242:6;244:3; 245:23;249:14;262:11; 266:4;269:10;277:24; 283:10;289:3;293:25; 297:23;304:8;309:4,21
impermissible (1) 296:15	include (7) 32:5;69:9;96:6; 152:16;222:11;232:10; 264:2	informed (1) 16:24	insureds (1) 138:3	intricacies (1)
implementation (3) 117:7;144:20;298:12	included (4) 132:7;137:11; 263:14;273:12	ingredient (1) 173:3	insurer (4) 15:2;19:10;24:24,24	
implemented (2) 105:25;117:9	includes (3) 228:20;272:11,12	inherently (1) 279:24	insurers (1) 44:5	
implicate (1) 128:21	including (12) 13:25;15:18;100:21; 118:24;130:22;160:2; 195:22;222:4;274:22; 289:5,19;291:14	in-house (3) 48:21;71:1;168:15	insurer's (1) 147:7	
implicated (1) 177:17	incorporated (1) 106:16	injunction (2) 49:11,23	intact (1) 51:16	
implicit (2) 92:20;251:25	incorrect (1) 120:3	injury (5) 144:4;145:3,4;196:8; 224:16	integrated (10) 228:18,19;229:18; 232:10;235:20;240:10; 241:5;263:14;272:4; 285:11	
implies (1) 169:25	increase (1) 249:15	input (2) 152:18;153:9	integrity (1) 230:4	
importance (1) 277:25	incurred (1) 223:13	insert (1) 297:7	intend (7)	
important (26) 10:14;21:24;27:20; 42:8;62:4;98:9;110:3; 134:14;145:7,25; 146:9;148:3;173:3; 190:13;214:8;215:4; 243:4;255:3,5;258:12; 263:6,17;266:18; 271:24;276:16;309:11				
importantly (6) 24:16;26:2;77:16; 128:19;282:1;303:25				
impose (2)				

269:1 introduce (1) 12:16 inventing (1) 230:13 invested (1) 279:9 investment (1) 202:14 investor- (1) 223:5 invitation (1) 36:8 invite (4) 87:4;126:4;192:4; 302:13 invited (5) 95:21;163:14; 230:20;235:8;303:8 involuntary (1) 201:7 involved (15) 42:25;45:20;56:13; 120:9;127:5,8;144:19; 145:6,9;152:15,20; 154:23;163:6;213:14; 274:20 involvement (3) 147:10;226:3,3 involving (1) 47:16 IP (1) 262:4 IPs (1) 260:2 irony (1) 170:10 issue (69) 15:9;23:7;29:7; 33:19;39:5;47:21;74:1, 20;84:19;85:16,18; 86:2;96:17;101:20; 106:12;107:3;108:8; 121:7;122:7;125:20; 128:23;130:7,22; 136:8;140:22;144:11; 149:17,17;160:10; 169:15;179:12;180:1; 186:19,20;190:22; 191:18;195:9,17; 200:11,11,12,14;201:6; 210:23;212:12;213:10; 239:25;242:8;243:5; 244:7,7;252:3;254:6; 257:16,24;258:7; 260:2;268:18;284:10, 16;290:9;298:1; 301:24;302:9;304:5; 307:12;308:10,15; 310:17 issued (3) 108:19;188:25;189:1 issues (64)	9:19,22;62:22,22; 65:16;78:13;80:15; 86:6;99:14;101:13,14; 103:24;104:1;106:17; 109:9,15,23;111:10,12; 113:9;122:23;128:19; 19:130:18,18;133:10; 148:5;150:17,18; 153:12;163:1,1,12,19, 23;164:16,20;165:13, 14,20;167:8,22; 168:17;169:16;185:23; 186:1,5;198:22;207:6; 209:17,18,20;215:4,4; 218:10;259:6,8,9; 289:19;294:4;297:24; 301:22;306:25;310:14 item (2) 115:2;116:2 items (4) 127:7;143:13; 145:19;151:6 iterations (1) 295:6 J January (22) 37:12;40:6,12,14; 72:20,20;91:15,21; 92:10,25;93:6,8;116:5; 132:19;225:25;231:4; 257:7;258:21;302:16, 19;304:16;306:11 jeans (1) 198:6 Jeffrey (1) 254:4 Jennifer (2) 220:7,12 jeopardy (1) 128:10 Jerry (1) 243:17 jettison (1) 292:13 job (6) 68:20;100:13; 161:25;185:15;204:21; 301:15 Joe (1) 143:5 Johnny-come-latelies (1) 250:3 join (1) 30:2 joined (2) 9:18;13:19 joint (3) 111:15,17;228:6 jointly (1) 225:4 Jose (6)	130:16,19;214:3,12; 220:5,13 Joseph's (1) 137:1 Judge (116) 8:23,25;10:9;31:2; 35:14,20;36:2;37:16; 44:14;45:8,9;46:19; 47:8,11,19;57:2;59:22; 80:5;81:5,6,9;82:3; 86:25;87:10;88:15,16, 23;91:14;92:22;95:8; 102:5;105:22;106:11, 11;107:10;110:22; 122:15,16,17,22,25; 123:9;134:4;135:15, 22;151:14;156:3,4,6, 13,20;157:4,13,18; 158:1;159:2,12,13; 160:4,11,23;161:2,3,9, 21;162:4;181:25; 183:8,10;189:5,6; 191:11,19;194:21; 203:11,20,22;204:4,6, 9,10,12,16;206:10; 207:5,15,20;208:13; 236:19;240:23;243:20; 244:13,15;245:25; 246:16;250:10;263:3; 275:22;276:6,21; 277:4,11;286:10,14; 287:3;289:20;293:15; 295:10,12,18,18; 296:21;308:12;309:16; 310:2,23 judges (4) 65:25;66:1;261:20; 294:23 judge's (3) 59:4;183:9;278:25 judgment (16) 24:23;29:12;59:23; 107:24;128:18;217:3, 4,5;237:24;238:1,3; 292:1,1,2;297:4; 300:22 judgments (2) 29:12;36:23 judicata (1) 149:12 judicial (2) 72:2;276:14 juggle (1) 90:2 Julian (114) 9:21;10:1,2,2,21,23; 11:9,11;12:5,8,13,15, 19,21;13:1,22,24; 14:19,21;15:5;16:1,4,8, 17,22;17:1,3,6,9;18:24; 19:12,18,19,23;20:1,3, 5,8,12,14,18;21:15,22, 25;22:4,24;23:5,9,13,	16,18,25;24:5,10,12, 15;25:2,4,25;26:2,21; 27:8,11,19,25;28:4,7, 10,22;29:1;34:10;37:4; 38:5,7,24;42:8;55:4; 94:16;113:19;116:13, 22;119:4;120:2; 131:11;155:10;159:11; 221:3,4;227:2,16; 231:24;242:17,19,23; 248:8,9,18;249:5,13; 250:12,22;251:9,15,22, 24;252:6,20;253:4,6, 17,21;298:17;299:4; 301:14 Julian's (2) 30:2;256:8 jump (4) 278:2;283:18,20; 285:7 jumping (1) 60:20 June (11) 49:1,5;111:1;215:23, 24;223:7;231:5;249:9; 262:7;283:14;292:19 jurisdiction (3) 154:8,20;252:25 jury (10) 18:4;19:9;24:1;68:3; 79:21;86:7,9;89:6,8; 287:6 Justice (1) 164:5 K Karotkin (117) 60:20;93:24,25;94:4, 11,14,21;95:13;98:25; 101:24;102:11,21,23; 103:2,5,12;117:4,11, 15,19,22;118:2,6,14, 19,21,25;119:15,18,22, 24;120:1,3,17,20,24; 121:2;122:11;131:9, 21;136:15,19;141:10, 16;149:21,23;150:2,9, 13,23,25;151:2,4,16, 22,24;154:3;166:12, 16;185:9,25;186:4; 187:1,3,8;189:9,14; 195:12,15;196:20; 216:17;236:18;258:2; 264:14;266:19;269:21; 275:11,13;277:17; 282:3;285:24;286:2,4; 288:5,6,7,10,12; 290:16,18,21,23;291:1; 292:23;293:20;299:5; 301:25;302:13;305:2, 3,6,9,13,16,18,20,25; 306:3,8,13,15,18,22,	24;307:1,3,23 Karotkin's (3) 126:15;234:3;300:14 Kaupp (14) 34:16,17,18,20;35:1, 5,12,12,23,25;36:6,9, 16,21 K-A-U-P-P (1) 35:12 keep (14) 41:11;90:3;95:8; 130:6;131:13;144:9; 173:7,17;179:11; 270:21,24,25;287:21; 293:9 keeping (2) 173:11;182:3 keeps (1) 181:14 keepwells (1) 211:9 Keller (1) 295:1 Kellogg (1) 12:22 Kelly (1) 243:16 Ken (1) 136:24 kept (1) 293:13 kettle (1) 100:2 Kevin (2) 156:25;308:24 key (6) 69:9;140:16;158:1; 161:13;289:10,11 kick (2) 35:16;36:3 kicks (2) 18:9;57:6 kill (1) 172:20 killing (1) 169:8 kind (19) 29:24;38:21;54:20; 79:18,19;115:2; 126:23;128:18;156:10; 166:12;167:18;185:25; 210:2,6;247:25;250:9; 253:11;269:9;275:6 kinds (2) 209:17;246:25 Klein (1) 295:10 Klein's (1) 295:12 knew (6) 41:12;149:20; 247:10;259:25;260:1,4 knocks (1)
---	--	---	---	--

251:8 knowing (6) 46:5;118:11;138:21; 147:6;231:23;242:13 knowledge (2) 197:10;300:9 known (8) 10:22;29:18;47:1,3; 233:10;287:11,13,15 knows (9) 11:19;14:6;17:10,11; 45:8,13;47:11;100:19; 299:12 Kornberg (4) 166:18,21,21;167:3	31:18;181:24 later (18) 8:24;14:1;16:2;25:6; 20;36:1;37:8,13;38:10; 103:25;113:17;114:7; 122:8;125:21;128:14; 135:17;236:19;302:12 law (31) 32:18;62:10,12,21, 22;63:6;65:24,25; 66:18;68:5;69:14;70:2; 71:13;76:11,17,19; 99:7;129:8,15;147:14; 175:2;208:4,5;224:22, 25;228:21;229:14; 280:15,19;301:8;304:4 lawful (1) 81:8 laws (1) 99:7 lawsuit (9) 36:20;72:21,25; 76:24;78:19,20;87:4; 252:8,16 lawsuits (3) 42:21;47:16;252:23 lawyer (10) 64:20;67:9;70:15; 72:15;73:19;84:5; 100:19;239:8;264:15; 299:23 lawyers (48) 14:22;17:12;24:17; 53:13;54:24;65:22; 71:1;72:13;95:21; 97:23;134:19,22; 145:3,5;153:18; 178:18;196:8,8;198:8; 210:16;224:14;226:4; 232:15,25;243:7,9,10, 14;245:7,15;247:4; 253:11;262:5;282:12; 288:25;289:1;294:2, 21;296:8,23;299:14,16, 22;300:7,11,16,22; 301:5 lay (2) 222:5;279:14 layman's (2) 60:12;237:21 laypeople (3) 222:5,6;223:24 lead (2) 219:16;249:17 leader's (1) 255:3 leaning (1) 215:10 learn (1) 215:21 learned (3) 137:11;243:25; 298:25	least (24) 15:22;26:11;40:17; 42:6;44:1,2;71:21; 102:12;115:21;157:8; 165:5;168:24;201:9; 23;204:11;205:19; 232:25;234:21;252:3; 258:9;259:22;277:3; 294:14,19 leave (20) 18:8;26:5;69:2;80:3; 89:16;123:4;152:21; 159:17;191:2;216:22, 24,25;232:17;242:12; 245:11,15;254:23; 274:1;285:18;304:9 leaves (2) 219:17,22 leaving (5) 124:2;184:3;196:18; 239:24;240:22 led (2) 246:4;298:24 left (11) 24:7;28:1;40:25; 43:23;49:22;80:6; 97:13;191:2;226:6; 230:25;245:13 legal (15) 10:11;66:14,23;78:3; 83:15;86:22;101:11; 196:1;208:4;209:15; 211:8,10;221:13; 256:24;296:22 legally (3) 10:12;210:21;300:15 legislative (1) 255:3 lender (1) 265:9 lenders (1) 299:14 length (2) 105:20;294:11 less (15) 57:7,8;98:17;164:16; 175:10;188:17;189:1, 3;191:17;205:11; 240:4;260:17,18; 279:8;292:7 lesser (1) 278:18 lets (2) 135:17,18 letter (26) 97:23;100:25; 101:11;108:19;109:11; 172:13;195:12;209:16; 216:7,7,8,9;231:11,12; 248:3,14;260:8; 278:24,25;279:1,2; 284:2;285:6,16;291:5; 293:18	letters (3) 217:24;239:3;247:19 letting (1) 46:23 level (5) 120:9;190:8;200:19; 216:11;281:21 leverage (14) 279:9;296:5,5,6,6,17, 18,20,23;297:13;298:9, 10,13;301:7 leverages (1) 296:22 liabilities (1) 15:21 liability (20) 14:11;15:21;22:1,6, 6;23:2;25:13;26:10; 27:2;29:12;37:18;38:1; 64:17;65:1;66:6; 114:16;132:20;133:9, 13;287:7 liable (2) 22:20;28:14 liaison (1) 39:7 life (6) 13:3;139:18;224:6; 253:7;277:23;299:17 lift (13) 37:6;40:4,18;41:6; 42:6,14;43:11;44:9; 46:11;50:1;52:10; 72:23;221:16 lifted (6) 37:13,21;46:14; 50:16;53:7,11 lifting (6) 37:8,14;43:14;88:19; 101:16;164:19 lift-stay (1) 8:12 light (3) 143:7;248:1;256:14 lightly (2) 198:23;221:14 likelihood (1) 278:18 likely (8) 36:9;100:22;138:15; 142:20,20;168:20; 277:5;278:10 limit (8) 12:4;14:15;16:11; 17:14;18:2;39:19; 145:23;227:21 limitation (2) 41:13;60:25 limited (6) 16:16;21:6;61:2; 69:6;256:14;274:3 limits (14) 11:13,14,17,23;	14:24;15:3;16:18;18:5, 25;21:7;24:2;33:10; 52:15;197:15 linchpin (2) 279:18;285:16 line (8) 172:8;173:19; 194:16;219:23;246:16; 255:21;260:25;270:12 lined (1) 283:1 lines (2) 65:8;286:10 lining (1) 247:4 liquid (1) 132:8 liquidated (11) 132:16;148:8,17,21; 149:25;225:17;305:24; 307:11;308:3,16;310:1 liquidates (1) 132:8 Liquidating (1) 182:4 liquidation (4) 53:16;148:11;171:7, 18 liquidity (1) 209:18 list (11) 97:21;102:2,6;107:5; 109:14;122:7;131:7; 136:16;154:3;165:1; 307:20 Listen (11) 86:19;99:21;113:20; 122:6;126:22;215:17; 216:15;248:13;251:17, 17;280:9 listening (1) 273:13 litany (1) 207:6 literally (3) 104:4;210:4;232:24 litigants (1) 301:10 litigate (6) 37:23;38:2,9;207:5; 262:14,14 litigated (8) 67:23;86:7,8,12; 134:1,1;140:10;158:25 litigation (15) 9:17;11:15;22:10; 37:4,11;55:19;56:17; 70:18;86:14;169:17; 206:13;250:25;258:19; 283:22;292:14 litigious (1) 206:8 little (37)
L				

10:25;11:25;34:15; 43:14;48:25;77:8; 83:11;88:12;89:2; 93:16;96:1;105:12; 108:7;125:12;128:14; 156:8;159:15;185:8; 188:6;191:22;196:12; 13,14;198:23;204:11; 210:3,10;219:13; 232:18;245:20;258:6; 265:5,13;270:15; 278:2;285:19;293:2	11;277:1;279:16,23; 280:2,3,4,4;281:7; 282:10;285:11;289:10; 12;290:5,13;291:18; 293:12;298:17;299:3; 5;300:16,20	58:11;283:21	172:5;181:17	8:8;9:1;13:18;19:8; 24:4;30:11;37:12; 64:17;71:15;78:3; 89:22;92:24;125:17; 129:18;133:20;141:9; 149:5;161:17,20; 178:15;180:24;185:1, 12;208:5;211:10; 216:19;230:7;232:20; 234:11,11;244:24; 256:24;268:17;274:20; 284:15;287:3;290:8; 298:24;304:1;309:2
live (6) 39:15;89:3;261:10; 299:20;304:23;306:5	lockups (17) 101:14;176:21,21; 177:4;180:21;190:11; 202:9;206:7;213:8; 259:4;264:2,25;269:2; 4;290:7;300:17;301:10	lose-lose (1) 244:24	major (6) 39:4;47:18;56:16; 194:20;223:5;310:17	
lives (10) 39:17;137:13;138:9; 168:21;223:19;248:3; 254:15,16;299:17,20	logic (1) 194:5	losing (1) 105:12	majority (4) 134:22;199:8; 224:15;282:17	matters (3) 119:12;154:6;164:22
LLP (1) 167:10	logistical (1) 88:12	loss (5) 55:11,12;69:7;138:5; 225:18	makes (5) 72:3;138:11;175:6; 256:13;265:2	Matthew (3) 124:15;164:5;258:4
lobbied (1) 210:14	logjam (1) 82:9	losses (2) 155:2;223:13	making (17) 16:18;26:14,14; 27:14;45:15;63:16; 141:4;193:6;195:13; 202:20,22,24;250:24; 255:4;260:25;264:1,24	maximizing (1) 199:12
lobby (2) 280:22;282:5	long (22) 8:22;25:5;42:18; 86:15;94:3;120:14,15; 123:14;159:23;161:7; 171:4;172:7;174:12; 175:2,2;177:17; 262:21;266:19;293:7; 302:21;306:10;311:4	lost (14) 12:21;38:12;39:12; 16;68:21,21;70:16; 186:23,24;188:1; 197:4;238:6;258:6; 266:18	management (5) 152:8;181:9;194:18, 19;255:9	Maxwell (8) 12:23,25;14:1;19:18, 20;35:7,12;58:5
lock (11) 167:14;176:11; 182:6;208:5;232:23, 25,25;235:13;248:11; 259:23;265:10	longer (11) 45:14;83:11;90:9; 110:18;111:17;112:2; 129:24;238:12,19; 239:20;308:15	lot (44) 24:22;31:17;37:9; 44:24;54:17,18;57:7, 21,23;65:21;100:3,4; 101:15,15;102:20; 134:17;143:13;164:19, 20;168:7,14,16,16; 181:3;184:6;214:17; 222:6;244:3;255:18; 259:17;273:2,2,3; 275:2;293:4,5,6;294:4, 5,21;300:16,17; 306:12;309:10	mandatory (1) 62:14	Maxwell's (3) 38:13,18;58:11
locked (3) 131:13;171:3;207:17	long-term (3) 211:20;282:25; 283:18	lots (7) 17:12;54:24,24; 59:15;67:13;273:10; 274:16	Manges (1) 288:7	May (68) 13:11;15:20;17:1; 21:23;22:19;27:25; 28:15;36:17,18;45:5; 46:15;49:5;58:9;60:24; 65:4;68:6;80:15;82:18, 20;83:10;84:3;85:15, 17,18;86:11;90:2;93:1; 95:19;104:25;115:5; 121:6;123:22;130:1; 132:2;140:8;144:2; 149:4;151:5;153:14; 157:14;159:5;167:12; 172:5;186:14;190:15; 197:3;205:17;211:24; 222:7,11;225:23; 229:10;230:19,21,22; 231:14;236:6;240:4, 23;241:21;249:8,9; 256:17;257:20;260:21; 276:20;289:16;309:15
locking (1) 195:10	look (40) 14:3;24:21;28:24; 31:15;48:23;49:20; 50:10,24;51:13;53:24; 60:14;72:2,16,18; 102:16;116:23;139:9; 149:1,18;150:15; 152:6;153:24;161:25; 163:22;172:22;181:25; 190:20;195:23;204:8, 15;212:18;216:2,3; 225:23;249:13;252:13; 263:12;287:7,8;304:8	loud (1) 267:8	manner (2) 152:13;241:5	
lockout (1) 191:9	looked (6) 94:7;126:10;218:5,6; 249:5,5	loudest (1) 267:7	many (27) 29:18;67:14;97:4; 99:1;134:17;135:10, 10,10;153:11;154:13, 23;165:15,19;168:18; 180:25;241:18,18; 246:24;247:20,20; 248:11;272:12;279:5; 294:1,25;296:12; 297:12	
locks (2) 128:25;203:21	looking (14) 16:20;25:12;31:17; 45:18;49:24;50:3; 78:14;79:12;113:23, 24;160:18;161:4; 231:11;245:3	love (4) 224:2;242:10,11; 297:11	map (1) 268:25	
lockup (111) 109:12;128:23; 130:7;167:13;169:7, 12;171:25;172:9,14, 20;174:2;176:14; 178:4,22;180:8; 182:17;183:1;185:13; 186:6;187:6,7;189:9; 190:18;193:8,14,15,17; 194:3,12;196:19,25; 197:14;199:22,25; 200:11;204:23;205:17; 206:21;207:1;209:23; 210:2,12,16;212:11,20; 213:10,16;227:6,10; 229:15,16,18;231:9,10, 12,16,22,23;232:1,10; 235:11,15,22;236:17; 238:22;240:6;241:23; 242:6,7;243:5;244:7, 12;245:9;247:12,17; 248:10;253:3;257:24; 258:7;262:17;263:6,8, 14,15;264:18,20; 265:2;269:12;272:2,	looks (1) 225:22	loved (1) 222:12	March (6) 114:9;175:14,14; 176:2;283:10,11	
	looming (1) 231:5	Lowenschuss (1) 294:16	mark (1) 188:2	
	loop (1) 156:13	lowest (1) 207:22	market (3) 138:16;142:12,13	
	lose (2)	luck (3) 71:11;77:3;93:19	marketplace (1) 101:17	
		lunch (1) 248:17	married (1) 230:22	
		luxury (1) 173:18	Mary (2) 17:19;39:7	
		lynchpin (2) 201:1;202:14	mass (2) 223:2;300:19	
		M	match (1) 188:3	
		ma'am (1) 220:10	material (2) 239:2;248:25	
		made-whole (1) 266:5	materials (1) 156:1	
		maintain (4) 166:19;167:25;	matrix (3) 154:11,25;232:22	
			Matter (40)	

Min-U Script® Case: 19-30088 Doc# 5169 Filed: 12/19/19 Entered: 12/19/19 07:35:08 Page 334 of 353 eScribers, LLC | (973) 406-2250 operations@escribers.net | www.escribers.net (22) meaning - most

198:7;258:12;263:17; 275:4;278:10;286:20; 289:6;291:16 motion (88) 9:3,4,18;10:5;13:19; 15:17;16:21;20:9,24; 22:18;25:15,19;28:2,2; 29:5,9,14,23;30:4,10; 31:2,6;35:19,25;36:13; 40:17;41:6,20;44:17; 46:1;57:3;58:3;59:25; 60:14,16;61:15,17; 62:19;63:10;64:3,18; 69:20;73:5;78:4,21; 79:3;80:3;82:8,10,13; 83:6,14;87:16,19;88:2; 6,6,20;89:16,20;91:5; 93:5,5;99:23;108:13; 116:13,15,18,20,25; 119:10;123:1,4,6; 127:11,16;128:6,7; 150:15;163:13;164:17; 199:3;242:6;269:16; 270:16;271:1;292:22; 297:8 motions (9) 8:12;21:2;40:23; 48:21;63:19;66:7; 124:24;264:25;293:9 motion's (1) 29:5 motivate (1) 181:12 motivated (1) 257:11 motivates (1) 246:25 motive (1) 65:16 mouths (1) 183:9 move (23) 34:15;37:6;60:16; 76:3;81:14;92:3;96:21; 103:19;104:14,23; 110:7;135:7;155:14; 165:17;201:14;204:15; 233:12;253:13;262:13; 274:12;288:22;297:6; 306:6 moved (2) 42:14;81:5 moves (3) 77:25;264:1,1 moving (17) 9:14;12:3;24:20; 33:23;45:21,23;60:4; 83:12;87:3,3,21; 105:15;110:24;275:8; 277:25;300:1,1 Mt (1) 295:11 much (42)	10:15;16:14;22:11; 34:8;37:11;41:2,7; 61:13;73:25;87:23; 98:2;99:1;128:16; 130:14;138:5;142:18; 145:11;164:3,7; 168:24;172:7;175:7; 178:19;182:24,25; 191:24,25;201:9; 204:4;205:8;220:2; 227:22;255:2;260:18; 267:16;278:3;292:7; 295:19;296:3,4;301:3; 303:6 multiple (3) 147:6;294:15;306:6 municipal (1) 266:22 musings (1) 287:22 musings (1) 205:24 must (3) 88:6;243:20;264:8 mutually (1) 308:13 Myers (2) 95:16;254:21 myself (7) 172:12,22;177:1; 182:14;230:13;293:12; 300:6 N Nadler (2) 126:7,8 nail (1) 77:6 name (19) 17:17;65:4;66:17; 74:14;75:15;107:18; 124:13,13;142:3; 155:22;156:22,24; 164:4;187:12;215:6; 220:11;241:11;253:25; 303:21 named (5) 119:14,16,16,17; 135:25 namely (1) 45:15 Nancy (2) 95:16;254:20 Napa (2) 62:17;137:18 nasty (1) 238:5 national (1) 281:5 natural (2) 84:24;85:1 nature (5)	46:4;86:12;89:15; 202:8;209:23 near (3) 192:7;302:14,15 necessarily (6) 126:3;182:6;203:15; 261:5;262:10;268:12 necessary (7) 87:24;96:13;129:7; 134:11;250:20;271:19; 306:5 need (76) 8:23;14:1;26:8;29:6; 35:10;36:10;37:18; 38:12;48:10;61:21; 62:25;65:17;74:5,7,19; 75:15;88:15;92:3,23; 96:11,12;100:23; 115:22;117:3;120:12; 121:24;124:21;125:15; 136:5;138:12;142:4; 20:154:1;164:20,22; 166:15;185:2;192:11, 12,14,17;201:17; 203:21;206:10;207:15; 208:24;212:18;215:25; 220:9;223:17,18,19; 227:5;231:20;254:7, 17,18;257:1,18; 264:21;278:22;279:11, 19,23;280:3,4;286:12; 291:3;305:14,20,23; 308:1,15;309:18; 310:3,20 needed (3) 108:11;112:15; 304:17 Needless (1) 108:6 needs (19) 12:11;89:8;103:15, 16;191:16;197:21; 209:20;210:17;212:15; 216:3;217:3;218:5,14; 219:25;250:19;254:19; 280:3;283:11;310:7 negative (2) 252:4;283:25 negotiate (3) 21:15;226:13;284:20 negotiated (14) 10:8;15:13;67:12; 117:12,14,17;133:4; 139:3;151:17;232:9; 267:3;269:12;290:4,6 negotiating (2) 21:10;281:10 negotiation (7) 135:9;145:20; 157:23;158:22;289:11; 290:1,2 negotiations (11) 105:20;117:7;	154:23;189:22;199:14; 207:5;212:23;244:2; 268:18,20;274:16 neighborhood (1) 23:23 neighboring (1) 85:7 neighbors (1) 139:13 neither (2) 100:14;264:11 net (1) 204:12 neutral (1) 183:21 Nevada (1) 295:19 nevertheless (1) 260:7 new (7) 14:6;25:12;73:16; 91:12,19;121:18;290:7 news (5) 52:18,18;137:22; 191:8;203:10 Newsom (2) 95:17;254:22 Newsome (14) 105:22;106:12; 107:10;151:14;241:7; 243:20;244:13,15; 245:25;246:16;293:16; 309:16;310:2,23 Newsome's (1) 10:9 next (32) 22:10;48:1;60:16; 61:15;69:20;70:3; 89:11,12;94:12,14; 108:1;116:11;117:6; 119:9,11;120:24; 126:23;139:6,20,21,22; 140:15;143:12;165:1; 167:4;190:2;231:3; 245:23;273:7;274:8, 12;298:24 nice (2) 43:19;255:9 night (3) 39:16;94:7;220:16 night's (1) 15:18 nine (1) 131:14 nineteenth (1) 135:22 ninety-five (1) 143:25 Nobody (5) 194:11;226:5; 245:13;289:2,2 NOLs (1) 279:8	non- (1) 149:16 nonbankruptcy (1) 232:14 none (6) 38:18;99:16;127:4; 158:4;245:10;268:22 nonindividual (1) 42:25 nonissue (4) 21:8;32:8;129:11; 179:19 non-issue (1) 149:4 nonlawyer (1) 299:23 nonlawyers (1) 54:25 non-planned (1) 221:10 Nope (1) 55:23 nor (7) 99:7;100:14;101:6; 109:8;212:15;221:25; 264:11 normally (1) 299:20 North (1) 256:10 Northern (2) 68:23;97:10 note (5) 69:12;110:8;145:19; 160:22;294:21 noted (3) 136:4;267:9;286:13 noteholder (3) 187:15,16;276:4 noteholders (4) 130:5,9;211:18; 212:24 noteholders' (1) 111:13 notes (2) 209:6;211:17 notice (4) 128:7;165:14,16; 246:4 notify (1) 135:18 notion (4) 28:19;88:13;242:2; 296:5 notwithstanding (6) 97:22;197:3;201:23; 238:5;240:8;256:8 November (1) 84:15 novice (1) 82:15 number (51) 8:22;11:9;20:21;
--	---	---	---	--

22:12;25:6,7;40:1; 83:7;97:12;98:23; 108:13;114:25,25; 115:23;119:14,19; 127:1;133:7;134:23; 157:11;158:23;167:8; 184:7,9,17;194:21; 219:1;226:13;237:13; 240:8,9;242:13; 249:19;262:10;269:8; 9;277:22;278:20; 279:20;286:15,16,17, 21,24,24;287:1,19; 288:16;289:5,19; 308:25 numbers (9) 114:18,19;117:22; 122:6;171:13,19; 180:4;182:5;184:21 numerosity (1) 144:2 numerous (1) 224:21	194:1,2 objectives (2) 86:19,21 objectors (7) 126:24;135:25; 136:1;151:11;156:19; 162:14;267:2 objector's (1) 108:14 objects (3) 64:9,10;171:7 obligation (3) 134:21;239:15,15 obligations (6) 78:14;129:7;192:17, 19;237:25;243:13 observation (1) 300:25 observations (2) 225:12;286:15 observe (2) 164:18;263:7 observed (1) 156:14 obstacles (1) 179:1 obtain (2) 29:12;79:15 obtained (1) 29:13 obtaining (1) 10:15 obvious (4) 112:23;113:22; 209:10;251:18 obviously (29) 9:1;17:25;19:11; 22:12;45:9;62:4;67:6; 69:10;96:2;108:13,14; 110:4;124:12;129:21; 163:2;178:6;183:1,24; 185:14;190:10;211:19; 213:10,14;236:11; 255:5;284:25;293:4; 298:5;310:2 OC (1) 128:25 OCC (2) 123:20;129:20 occasion (1) 82:22 occasions (1) 277:1 occur (3) 62:21;271:23;277:5 occurred (7) 36:10;40:13;55:5; 59:10;239:2;273:11; 308:14 occurring (1) 290:12 occurs (1) 197:15	o'clock (5) 95:8;123:22,23; 135:15;136:9 October (1) 42:12 off (36) 22:7;25:6;36:3;39:1; 76:23;96:15;124:3,4; 125:22;129:24;131:17; 145:5;157:8;159:4,12; 160:1,11;162:2;169:8; 170:13;173:10,23; 174:19;176:3;206:8; 213:3;214:3;221:5; 241:6,6;251:8;252:7; 265:5;280:14;293:2; 307:14 offended (2) 113:21;257:15 offer (3) 25:22,23;298:21 offered (1) 86:2 offering (1) 90:22 offers (1) 221:20 office (15) 103:22;109:25; 162:20;165:5,12,14; 192:1;193:1;213:25; 229:7,13;231:2; 280:25;281:2;307:10 officer (1) 276:14 officers (1) 216:21 offices (1) 139:24 official (13) 10:3;128:22;129:3, 10;131:19;134:20; 152:5;167:4,10;221:8; 231:15;234:12,15 officially (1) 136:2 offline (1) 127:13 often (2) 245:18;297:3 OII (5) 57:9;101:16;128:20; 173:24;229:6 O'Melveny (2) 95:16;254:21 omnibus (1) 304:3 once (12) 40:1;52:21;123:5; 126:18;128:15;130:21; 133:15;182:12;198:2; 249:23;258:24;263:3 one (182)	8:13,21;9:11;12:2; 13:1,7;15:2,6,15;19:6; 25:6;26:11;27:20; 29:19;36:16;39:16; 40:19;43:9;45:7;48:7; 49:8;52:9;53:25;56:11; 59:8;67:5;68:18,25; 69:6;74:23,25;78:14; 82:22;87:18;96:16; 97:5,24;107:7;109:15; 110:17;112:8;118:7,8, 12;126:11;129:22; 131:20;132:1;139:19; 141:21,21;142:1; 145:8;146:14;147:4; 148:5;149:15,16,18; 153:3;155:12;161:10; 165:5,13;169:12; 170:12,22,22;171:7; 172:8;173:11;174:8; 178:7;179:25;182:7; 183:6;185:10;186:9; 187:23;189:23;191:17; 193:25;194:5,11,17,23; 197:12,17;199:21; 200:21;201:9;204:20, 24;205:24;206:23; 209:22;210:15;212:12; 216:2;218:3,24; 220:13;224:6;225:10; 227:5,5,16;228:10,10, 22;231:17;232:18,23; 233:5;234:4,16;236:1; 237:8,12;241:12,13; 242:17;244:4,9,12,15, 23;245:11,23,24; 248:11;252:8,16; 253:2,13,17;256:9; 257:21;259:24;262:7; 264:13,16;265:16,22, 23;266:12,12,17; 267:24;269:8;270:7; 272:14;273:8,13; 274:15,15;280:9,12,22; 281:7;285:25;286:17, 25;287:8;289:24; 293:5;294:5;295:3,21; 296:6;299:9,9;302:25; 303:20,25;304:4,14,18; 307:19,25;308:20; 310:3 one-billion-dollar (1) 219:1 ones (5) 107:7;119:17;168:3; 250:18;306:17 One's (2) 43:1,2 ongoing (1) 103:21 only (58) 10:12;11:3,19;13:18; 19:24;24:21;27:18;	37:13;38:14;42:25; 46:17;49:20;50:24; 52:9;87:2;92:1;108:14; 112:20;113:9;131:23; 134:20;146:11;148:20; 151:10;177:7;178:6; 23;182:16;184:18; 187:20;189:22,23; 193:2;194:4,10,19; 197:14;203:16;204:10; 205:7,12;219:10; 223:7;224:16;228:12; 238:14;248:23;264:8; 269:16,17;280:3,21; 284:1;287:20;289:21; 290:3;306:18;307:15 onto (2) 169:22;224:23 oOo- (1) 8:2 open (7) 173:7,11;182:3; 234:21;260:1;280:5; 300:25 open-ended (1) 25:22 opening (3) 66:22;102:12,25 operate (3) 212:14,15;297:6 operating (2) 223:8;297:18 operation (1) 85:1 operational (1) 130:18 operative (1) 159:18 opinion (6) 30:17;112:1;246:23; 258:8;284:22;294:23 opinions (1) 97:2 opponent (2) 90:25;284:11 opponents (3) 102:2;136:16;220:23 opportunities (3) 183:15;259:10; 295:14 opportunity (19) 30:20,25;64:3;74:8; 88:9;90:10;135:25; 142:11;151:9;153:8; 198:15,15,16;202:16; 221:9;266:22;275:21; 304:17;310:12 oppose (5) 78:8,12;171:16; 297:8,22 opposed (8) 30:12,13;43:10; 69:17;128:16;171:15;
Oakland (6) 30:11;35:22;43:2; 45:4,19;84:23 Oakland's (1) 46:1 object (17) 32:9;64:19;105:3,4; 138:9;144:6;153:9,19; 211:25;244:17;250:3; 267:22;278:16;283:7; 284:12;304:18;309:25 objected (5) 31:14;32:22;106:25; 128:5;135:4 objecting (2) 131:22;165:22 objecting (29) 31:7,13;32:4,14; 33:3;65:3,11;66:4; 111:14;114:24;115:5, 7;116:14,19;126:13; 128:6,8;143:8,9; 147:22;149:2;150:7, 21;153:19;156:2; 200:5;248:19;266:1; 304:18 objections (23) 32:3;102:7;113:14, 15;118:8;123:17,18, 19;126:2,10;127:3,11, 25;130:13;131:7; 132:1;141:14;151:5,5; 152:12;156:11;231:15; 302:6 objective (3) 84:25;86:16;154:24 Objectively (2)				

227:10;235:1 opposing (4) 60:5;163:13;219:8; 294:10 opposite (3) 103:20;170:10;218:7 opposition (18) 9:19,20;10:5;62:24; 63:19,23,24;64:18; 77:21;81:25;86:5;91:4; 93:4;116:24;127:18; 130:21;296:2;305:10 oppositions (1) 101:25 opt (2) 295:8,8 optimistic (2) 226:25;227:1 option (3) 81:7;155:3;236:23 optionality (1) 98:17 options (4) 173:7;182:2,3; 183:21 oral (6) 63:4;108:8;126:4; 293:8;302:1,8 orally (1) 125:21 order (48) 8:3,17;9:7;20:25; 33:20,20;35:13,17; 37:19;52:23,24;53:3; 54:20;60:1,15,23;61:9; 81:9;110:1;114:1,3,13, 15;123:5;124:2; 126:23;132:13;133:1; 135:25;145:21,25; 153:15;159:11;166:13; 192:13,16;196:9; 221:17;223:19;284:16, 19,20;285:19;293:10; 304:1,5,14,15 ordered (1) 145:22 orders (4) 33:14;301:24,25; 302:10 order's (1) 114:2 ordinary (2) 264:2;268:4 origin (1) 140:13 original (1) 159:7 originally (1) 28:18 ORSINI (101) 103:17;104:6;105:2, 4,6,10,14;106:21,24; 107:2,6,9,15,19;	108:10,16,18;109:1,3, 8,13,18,20;110:20; 111:22;112:1,9,12,17, 20;113:17;114:5,8,11, 15,19,21;115:3,7,11, 16,19,22;116:4,6,9; 117:16;122:15,17,19, 22;123:24;124:5,7; 125:25;135:14;156:17, 20,23,25,25;157:4,20, 23;158:10,12,17,19,21; 159:20,22,25;160:5,9, 12,14;176:3;185:9; 244:19;285:25;286:5, 7,8,12;287:10,12,14, 16;288:4;289:10; 307:24;308:23,24; 309:6,8,13,19,20; 310:5,10,20 Orsini's (1) 160:24 others (9) 48:21;116:24; 126:14;142:6;176:20; 177:10;296:2;298:23; 302:14 otherwise (8) 15:4;98:3;110:4; 158:13;200:17;278:17; 290:11,23 ought (9) 19:1,3;87:17;99:21; 123:4;130:17;149:18; 248:14;275:9 ourselves (1) 260:2 oust (1) 68:13 out (110) 9:7;10:10;11:22; 13:2;15:17,25;16:8; 17:13;19:21;21:13; 22:8;27:15;28:1;43:15; 47:11;54:1;59:17; 60:20,21,23;66:8; 67:15;71:11;73:15; 77:3;78:14;86:25;95:6; 98:4;100:17;105:19; 106:10;108:23;111:2; 112:8;115:1;126:24; 128:4;129:12,13,14,15; 133:11;135:17,18; 141:6;152:22;155:18; 159:11,15;163:6; 167:14,15;174:7; 175:19;182:8,17; 183:2,4;184:18; 185:17;188:18;189:24; 190:11;193:16,24; 194:3;195:4;198:4,5; 200:21;206:20;210:24; 211:4;213:13;226:6; 230:11;231:19;232:16,	22;237:2,7;239:3,22; 241:25;242:5;243:22; 248:9;249:17;252:22; 254:25;256:19,20; 259:10,11;261:21; 262:7;264:8,16;277:2, 6;280:20;285:17; 289:7;293:7;295:8,24; 298:4;307:25;310:12 outcome (9) 25:16;33:21;160:25; 226:15,16;246:24; 247:2;278:10;300:5 outlined (1) 279:3 out-of-pockets (1) 38:16 outrageous (1) 208:18 outset (2) 291:10;295:4 outside (6) 22:21,22;48:16; 85:13;168:15;230:20 outstanding (3) 209:6;266:1;268:18 over (58) 11:25;14:7;19:18; 35:16;38:13;42:22; 43:14;47:12;58:18; 59:16;68:8;72:5;81:4; 82:3;85:10,12;92:16; 119:11;134:18,19; 135:6,10;137:8; 143:24;152:6;159:19, 23,23;160:4;174:2; 179:25;180:11;189:10; 191:5,10;196:21; 199:10;200:4,14; 201:14;221:13;227:8; 228:9;230:24;241:20; 245:10;246:15;251:3; 264:6;272:12;276:1, 14;293:3;294:17,18, 18;295:2;302:18 overall (2) 158:22;230:16 overburdened (1) 250:25 overlooked (1) 124:17 overnight (1) 139:14 overpaid (4) 206:1,14,15;207:14 overpaying (2) 208:6,18 overpayment (1) 206:9 overpays (1) 241:1 override (1) 128:6	overruling (1) 302:5 oversee (1) 238:12 oversight (1) 127:10 oversimplification (1) 269:13 oversimplify (1) 236:16 oversimplifying (1) 87:9 overtime (1) 297:14 owe (1) 224:22 own (19) 14:4;15:12;23:2; 51:7;59:6;76:18;79:12; 89:2;90:18;102:2; 126:24;138:5;169:16; 216:20;226:2;245:5; 270:14;296:13;297:1 owned (1) 223:6 P pace (2) 45:21;147:24 Pacific (1) 60:8 pack (1) 259:13 package (2) 156:1;219:8 pad (1) 67:17 padded (1) 71:11 padding (1) 67:23 page (10) 113:24,24;115:25; 116:11;119:11,11; 120:24,24,25;237:17 pages (5) 107:15;276:8,13; 277:11;286:10 paid (16) 24:23;27:4;42:9; 111:11;117:24,25; 118:3;132:6;171:24; 195:16,17;201:19; 206:17;211:5;235:1; 257:7 panoply (1) 99:14 paper (3) 52:9;218:9;279:13 papers (22) 11:2,12;12:3,10; 13:8;15:14;16:17;	40:13,14;41:22;61:21; 76:25;86:9,23;87:24; 113:1;128:17;170:5; 197:9;205:2;230:15; 256:6 parachuting (1) 37:9 Paradise (3) 137:19;139:13; 232:17 paragraph (9) 17:4;20:22;117:6; 149:10;237:4,10,11,17; 270:15 paragraphs (1) 16:22 paraphrasing (1) 175:11 parcel (1) 129:8 Pardon (1) 17:2 parents (2) 12:24;38:12 Park (1) 294:25 part (47) 21:13;26:13;49:11; 51:1,23;65:11;69:15; 77:20;79:11,11;86:13; 92:19;119:2;126:15; 127:3;129:8;132:7; 145:12,13,15;157:20, 23;158:22;161:13; 163:2,9;165:21; 189:22;217:3;218:3,4; 219:2,5;223:22; 228:23;229:18;244:21; 249:25;263:13;266:5; 276:8;308:9,11,25; 309:2;310:7,21 participants (1) 273:11 participate (5) 52:1;163:15;209:24; 212:6;226:23 participates (1) 132:9 participating (2) 214:19;265:15 participation (1) 224:21 particular (11) 65:13;106:24; 118:12;121:23;129:13; 152:14;163:7;182:7; 217:23;223:15;304:20 particularly (14) 86:3;115:13;116:25; 123:15,19;131:1; 179:25;187:7;196:8; 223:14;231:10;250:10; 292:4;294:5
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particulars (1) 130:20	109:25;121:17;293:24	247:20;262:12;264:1, 7;273:8,14,14;274:16, 16,22;275:14,15; 278:16;280:21;281:16; 284:17,22;285:18; 288:12;297:6;298:10; 299:19;304:17;306:1	301:11	pieces (2) 146:9;285:19
parties (69) 12:3;28:25;60:4; 96:11;104:18;105:21; 106:12;107:10;108:20; 110:3;112:21;118:8; 127:19,21;129:5,6; 131:22;134:13;136:7; 144:23;145:8,9,17,20, 22;147:9,24;153:9; 154:14,22;158:12; 161:4,16;165:21; 171:25;172:3;177:8; 180:2,22;210:19; 212:16,24;224:18; 225:11,12,22;228:23; 230:1,16;240:19; 265:9;267:3;269:14; 270:11;275:3;280:11; 289:12;290:2;291:12, 16,17;292:3,8;293:16; 301:8;302:6;305:10; 310:2,13	patently (1) 284:11	per (2) 80:21;153:3	persuades (1) 238:16	piggyback (1) 169:22
parties' (1) 299:7	path (8) 73:15,24;110:25; 134:24;218:17;248:1; 292:12;309:15	perfect (4) 30:25;93:18;135:3; 275:25	persuasion (1) 140:14	pill (1) 168:2
parties-in-interest (1) 301:5	patient (2) 162:17;258:9	performable (1) 268:23	persuasive (1) 26:13	pin (1) 259:23
partly (1) 88:17	Paul (5) 162:19;166:21; 303:22;307:9;308:7	performance (6) 79:12;81:9;83:17; 86:4;87:12;199:9	pervades (1) 146:11	Pina (1) 29:4
partner (3) 197:4;242:17;253:9	pause (1) 123:7	performed (1) 85:10	PEs (1) 195:11	pinning (1) 26:20
partners (1) 201:14	paused (1) 123:4	performing (1) 85:12	petition (3) 107:24;136:5;223:1	Pino (36) 9:15,15,16,25;29:8, 23;30:13,22,25;31:5, 10,12,15,19,21;32:1,2, 15,17,20,22,24;33:1,5, 14,16,18;34:2,5,10,14, 22;49:18;60:1;61:10, 12
parts (3) 271:17;274:3;295:1	paving (1) 106:4	perhaps (12) 45:11,12,13;102:4; 123:18;127:13;180:19; 185:2;194:18;233:1; 298:22;310:21	PG&E (83) 8:8;11:3,20,20;13:7, 14;14:2,2,9;16:5,8; 19:2,4,14;20:22;22:1, 20,21;24:1;25:11,13; 27:4,4;28:14,15;30:17, 20;31:16;35:16;36:10, 14;37:17;38:3;40:20; 41:7;42:10;45:10; 51:15,22;55:21;57:7; 59:21,22;60:8;62:9,19; 63:20,22;65:9;68:5,7, 20;69:16;70:17,25; 71:2,6;72:10;75:22; 77:15;79:22;80:6; 84:15,20;85:4,10,11; 87:5;90:1;93:3;135:5; 137:5;138:2;223:7,9; 234:8,24;238:6; 251:19;252:23;264:9; 284:13;285:6	pitch (7) 59:22;162:4;166:2; 184:6;193:6,9;196:6
party (19) 9:14;24:20;33:23; 39:16;87:4,21;115:8; 118:8;124:20,21; 132:2;145:24;180:1, 22;183:21;209:23; 221:10;292:3;294:24	pawn (1) 253:10	period (5) 87:19;203:24; 261:19;273:25;304:18	PG&E's (12) 10:5;14:7;20:8;37:7, 24;45:9;62:13;64:17, 19;66:22;67:21;92:2	Pitre (38) 242:19,21,22,24,24, 25;243:2,4,8,11,13,16, 23;244:1,16;245:3,19, 22,25;246:7,9,11,13, 20,22;247:8,16;248:6, 7;260:12;261:21; 278:14;284:17;287:1, 5,19;289:9;299:4
party-in-interest (1) 18:24	pay (13) 11:23;14:13;18:18; 23:4;24:24,24;51:9,10; 188:18;197:19;202:4; 261:16;296:19	permissible (5) 185:4;295:25; 296:22;300:15,15	ph (1) 20:18	place (23) 19:1;30:18;33:12; 35:4;36:2;40:25;53:4; 61:23;62:6;64:6;130:6; 187:23;190:6;196:10; 216:25;250:18;253:13, 15,15;270:7;277:13; 290:14;301:7
Pascuzzi (19) 127:19;155:17; 162:15,16,19,19,24; 163:17,19,22,25;164:8; 307:6,7,9,9,14,21; 308:12	payable (1) 261:13	permission (1) 34:19	phase (1) 276:14	placing (1) 69:21
Pascuzzi's (1) 309:23	payers (1) 112:24	permit (2) 70:3;280:15	phenomena (1) 264:16	plaintiff (4) 25:16;77:8;80:3; 117:23
pass (2) 28:3;227:25	paying (3) 27:15;52:13;202:2	permits (4) 85:5;147:14;301:8,9	philosophy (1) 59:6	plaintiffs (36) 11:15,16;14:15; 16:11,15;18:1;24:7,18; 25:21;30:12,13;36:7, 13,19,22;37:2,15;38:9; 40:10;42:22;47:1;50:9; 51:15;52:1,18;55:2; 59:20;117:8;119:14, 16,17;126:20;130:15; 249:8,18;261:17
passed (3) 15:11;21:11;28:18	payment (7) 13:5;132:11;139:17; 223:13;224:3;239:23; 257:9	permitted (3) 19:15;178:22;221:17	phone (3) 161:5;165:11;181:24	plaintiffs' (3) 43:12;52:25;232:15
passing (1) 28:7	payments (4) 135:6;225:23;238:1; 289:8	person (4) 232:21;242:3;247:8; 299:23	phonetic (2) 126:12;135:19	plaintiff's (1) 77:3
passthrough (4) 51:23;52:4,8;64:13	pays (1) 27:9	personal (9) 58:12;126:6;132:18; 144:4;145:2,4;196:8; 224:16;226:2	pick (8) 208:4;234:5,5;265:9, 10;266:11;279:19; 285:19	plan (327) 10:8,19;15:10,11; 22:22,25;24:6;25:1; 27:3;28:18;31:7,7,13,
past (6) 47:13,21;69:7;	PD (2) 262:24,24	personalize (1) 238:16	picked (2) 189:5;304:20	
	pegs (1) 204:22	personally (2) 97:6;233:5	picture (1) 27:22	
	penalty (1) 79:6	perspective (5) 188:7;189:13;190:7; 198:24;301:4	pie (2) 144:16;146:9	
	pending (5) 72:21;128:20; 148:11;157:6;305:11	persuade (2) 90:10;148:16	piece (6) 26:11;60:21;144:16; 194:20;253:11;287:21	
	people (67) 23:11;39:14;43:19; 48:13,22;53:22;56:12, 24;65:22;66:8,8;67:22; 83:7;95:8;96:14;97:4; 104:25;107:2;118:13; 119:19;126:5;132:5, 12;133:25;137:16; 139:11;140:11;151:24; 152:1;168:18;178:18; 183:12;185:16;193:25; 194:14,15;196:16; 199:24;202:15;213:8; 217:18;223:18;236:22;	persuaded (4) 131:1,4;162:1;		

16,22;32:2,3,8,13,49:5; 52:5;96:4,10,11;99:17; 100:22;101:8,8,18,20; 103:19;104:2,14,15,15; 105:7,15,16;106:1,4, 17;108:1;110:5,9,15, 17,17,17,18;111:10,15, 16,17;112:2,5,21,23; 113:5;114:16;115:16, 17,19;127:3,4;128:9, 10;129:1;131:14,15; 134:7;138:11,11; 141:18;142:8,21; 144:3,24,25;145:18,19; 147:21,21;149:7,10,12; 150:6,10;151:7;152:7, 19;153:1;154:19; 160:2,3;165:18; 166:25;168:22;169:9; 171:4;172:1,3,10,10; 173:25;174:13,13,18; 175:6,21;176:5;177:5, 11,17,25;178:5,22,24; 179:1,3,8,11,13,14,17, 25,25;181:14,15;182:8, 8,19;183:14,25;184:6, 9,13,13;185:2;186:20; 187:9,19;188:6,10,12, 19;189:11,23,23,24,25; 190:4,6,12,12;192:20; 193:1,14,22,25;194:5, 6,6,11,23;195:5,6,11, 24;196:7,10,20;197:2, 11,15,20,22;200:2,9; 201:7,10,14,16,17,23; 202:14;203:5;205:3,3; 206:2;207:12;208:8, 15,20;209:15,18,24,25, 25;210:1,7,20;212:7, 25;215:10,10,16,25; 219:8;220:1,23; 221:17,19,20,22,23; 222:9;223:24;224:3,4, 5,7;228:6,9,11,21,25; 229:8,10,11,12,24; 230:22,24,24;232:1,19, 20;233:8,9,14,15,20, 22,22;234:3,3,25; 235:1,6,8;236:21,22, 22,24;237:4,6;238:2,3, 8,14,14,21;239:8,20, 24;246:24;248:21; 249:21;250:1;251:2, 10,11,13;255:7,10,12; 256:16;258:15;261:16; 263:19,19,20;265:13, 17;267:17,19,23;268:2, 4,5;269:6;271:20; 278:8,18;279:4,4,5,6,6, 7,8,19,24;280:13,13, 24;281:12,17;282:1,4, 5,24;283:6,11,15; 284:11,12,14,18;	291:21;292:9;300:12; 301:17,19;303:4,7; 307:22 plans (13) 96:16;172:8;194:4; 195:7;199:1;219:11; 233:2;251:10;254:25; 263:25;265:9,17;285:1 plan's (3) 267:16;283:7;284:5 plan-type (1) 165:20 plate (1) 214:25 play (12) 47:11;53:18;99:24; 138:16;159:15;175:19; 180:7;185:16,18; 190:16;193:16;236:4 played (5) 131:2;170:13; 234:16;256:19;295:24 player (1) 234:16 players (3) 197:16;275:19; 310:17 playing (12) 204:11;235:23,24; 236:6;244:10;246:1, 15;252:15;261:19; 266:7,9;281:22 plays (3) 141:6;256:19;310:12 pleading (1) 112:5 pleadings (5) 38:19;40:22;98:3; 163:5;254:23 please (11) 8:18;86:1;135:18; 136:14;187:11;216:18; 220:11;221:1;274:13; 276:10;292:24 pleasure (2) 94:1;230:5 plenty (6) 11:2,4,5,6,8;28:9 plowing (1) 82:14 plummeted (1) 137:23 plus (8) 24:9;33:11;50:25; 51:1;60:13;249:1,3; 266:21 pm (5) 136:11,11;220:24, 24;311:7 pocket (2) 43:15;201:3 pockets (1) 223:21	podium (8) 23:24;154:2;189:15; 196:20;225:11;235:19; 242:11;249:10 point (151) 10:10;14:10;21:7; 22:13;25:21;27:20; 28:5;33:7;40:19;45:17; 46:22;47:8;48:20;50:4; 52:9;54:18;55:14;57:6; 59:13;60:24;66:15; 69:12,15;71:20,24; 72:13,18;73:2,20; 78:17;79:16,24;90:4; 100:20,20;101:7; 105:19;106:10;108:8; 111:2;115:6,23; 121:23;126:4;131:10, 20;132:17;133:5; 134:12,18;139:19; 140:2;145:22;146:3; 147:4;150:19;151:1; 157:9,25;158:1,5,12; 163:16;169:20;170:1; 174:5;175:1;176:16; 178:6,19,21;179:15,18; 180:7;181:16;183:22; 186:8;191:20,21; 196:5;198:13;199:20; 204:4;206:3,5,5; 207:22;208:20,21; 213:13;217:2;218:2, 24;220:17;228:17; 229:8;230:19,21; 232:19;236:16;238:8; 242:1;247:15;248:9, 20;249:6,17,17,19; 251:12,13;252:13,17, 19,20;253:8,17,18; 254:18;256:5,15; 263:3;265:1,6;266:1; 268:21,24;271:25; 273:7;276:24;279:13; 281:25;283:9;285:1,5, 10;286:24;287:1,2,20; 288:2;295:3;296:1; 298:8;299:4,6;301:15, 23;304:10;306:20; 309:23 point- (1) 156:11 pointed (1) 261:21 pointedly (1) 152:7 points (11) 42:7;131:20;140:13; 163:11;165:18;187:23; 216:5;218:3;222:21; 248:23;294:8 poison (1) 168:2 policies (7)	18:3,14;19:14;39:22; 138:2;250:13;251:3 policy (14) 11:3,13,14,18;13:17; 14:24;15:3;16:18; 17:14;18:5,9,25;21:7; 51:21 political (1) 101:16 pool (4) 118:1,12;130:23,24 portability (1) 199:1 portfolios (1) 138:4 portion (5) 87:2;132:11,12; 135:4;148:20 position (41) 14:23;25:23;29:6; 35:17;37:22,24,24; 38:4,7,8;49:3,4,4; 58:19;59:1,18;69:22; 77:7;90:1;95:4,99:17; 122:13;123:2;127:18; 130:16;138:5;162:18; 164:3;166:1,14;173:4; 187:9;250:18;256:18; 260:7,18,19;297:21; 298:8,23;301:19 positions (3) 98:24;296:14;297:2 positive (3) 252:6;260:17,19 possession (3) 222:15;265:7;297:7 possibility (5) 36:16,20,21;159:5; 169:16 possible (4) 205:9,9;234:21; 267:1 possibly (3) 130:3;200:17;212:14 Post (1) 263:1 post- (1) 107:23 post-confirmation (1) 154:5 post-petition (11) 107:22;108:6; 113:10;130:10;188:14, 18;195:25;200:24; 211:5;274:23;296:20 post-trial (1) 21:1 post-trust (1) 309:3 pot (4) 22:16,17;50:6; 249:15 potential (5)	54:1;153:4;172:7; 213:15;285:18 potentially (2) 183:14;283:21 power (2) 65:8;99:24 practical (4) 59:19;178:15; 184:25;185:12 practicalities (1) 228:11 practice (2) 13:10;33:25 practiced (1) 137:4 praise (2) 107:15;111:4 Pre (1) 263:1 preceded (1) 222:16 precedence (1) 161:14 precedential (1) 133:9 precise (1) 268:10 precisely (5) 158:10,19;159:25; 160:12;291:10 preclude (1) 213:17 predators (1) 299:19 predictable (1) 138:19 predicted (1) 226:16 predicting (1) 226:15 prediction (2) 201:19,20 preempted (2) 66:16,17 preemption (2) 62:20,22 prefer (2) 225:13;234:23 preferably (1) 145:8 preference (5) 19:16;119:17; 120:10;131:24;132:13 preferred (1) 38:11 prejudice (3) 37:7,13;90:1 prejudiced (1) 109:9 preliminary (5) 63:22,23;77:21; 81:24;121:9 premature (1)
---	---	--	--	---

153:13 preparation (2) 82:11;83:11 prepare (2) 59:22;183:13 prepared (7) 18:12;58:18;80:19; 108:7;130:25;258:23; 269:6 preparing (4) 47:4,6,20;83:6 prescriptive (2) 89:6,9 presence (2) 13:3;127:14 present (4) 38:19;225:21; 250:12;251:1 presented (8) 19:20;27:24;38:23; 45:4;84:19;129:17; 151:7;275:1 presenting (1) 75:25 presently (1) 233:18 presents (2) 65:13;110:25 preserve (1) 279:19 preserves (1) 279:8 preserving (1) 155:7 preside (1) 59:16 President (1) 248:13 presidential (1) 248:11 presiding (2) 8:5;276:14 press (4) 156:6;161:5;183:25; 247:18 pressure (1) 30:7 presumably (6) 45:15;72:24;81:1; 124:2;163:14;193:8 presume (2) 35:20;122:19 presumption (2) 148:17;149:14 pretend (2) 48:25;275:22 pretext (1) 65:17 pre-trial (2) 21:1;51:18 pretty (6) 29:5;85:2;175:7; 178:19;183:10;254:22	prevails (1) 69:4 prevent (4) 169:7;229:22;281:8; 10 prevented (1) 84:20 prevents (2) 201:13;229:12 previously (4) 185:25;249:8; 294:10;296:9 price (1) 171:24 primarily (2) 73:23;257:12 principal (5) 197:23;209:6;267:2; 268:18;275:19 Principally (1) 167:24 principle (1) 301:22 principles (1) 299:8 prior (4) 114:11;280:10; 284:13;293:16 priority (2) 165:23;207:14 private (1) 67:8 privilege (1) 246:11 privy (1) 139:7 probability (1) 277:23 probably (13) 51:16;17;96:16; 102:18;116:15;136:9; 142:21;168:13,15; 203:23,24;208:22; 304:13 problem (24) 36:24;70:16;76:23; 79:10;80:16,17;81:2, 11;84:20,20;85:4; 88:10,12;92:23;175:9; 183:2;186:14;212:16, 18;219:3;220:1; 283:10,24;304:16 problematic (2) 212:9;249:24 problems (3) 13:4;88:16;279:3 procedural (3) 152:3;185:8;304:15 procedurally (1) 70:3 procedure (6) 63:12,25;66:24; 67:24;127:15;147:25	procedures (21) 63:17,18;66:16; 93:16;119:1,5;127:6; 128:1;145:1;146:11; 147:11;150:15;151:6, 12;153:25;154:21; 173:24;181:9;194:15; 225:23;226:1 proceed (11) 14:25;19:13,15;67:7; 113:6;143:22;169:18; 179:8;230:18;291:13; 302:17 proceeding (4) 25:8;128:20;155:4; 307:16 proceedings (23) 21:1,2;110:22;118:4; 119:2;123:4,7;129:21; 133:14,15;134:11; 152:16;157:6;158:7; 159:6;161:13,15; 176:23;240:20;289:15, 20;308:11;311:7 proceeds (2) 29:14;97:16 process (89) 26:12;35:18;44:1,3; 49:25,25;56:13;61:23; 62:6;64:5;65:11;66:13; 68:8;69:3,4,10,11,13, 15;70:6,14,19;72:2; 73:13,20;110:15; 128:9,10;133:20; 140:25;141:6;145:7,9, 10,13,14;152:17,19,19; 153:9;163:6;165:19; 167:25;169:20;170:15; 172:5;173:11,17; 178:9;179:7,11; 181:14,15,17;183:12, 14;191:2,16;198:17; 199:12;201:14;203:5; 215:16,21;221:12,14; 224:8;225:9;226:3; 227:15;229:6,7; 230:20,21;232:22; 238:12;247:6;256:19; 265:8;270:4,8;272:1; 274:14;278:1,9,12,14; 280:6;282:22 product (3) 15:8;105:20;139:2 productive (1) 121:14 professional (1) 247:1 professionals (18) 54:25;95:2;97:17; 104:9;108:25;121:25; 128:25;131:2;155:5; 177:10;180:8;181:5; 222:1;226:7;231:6;	232:13,15;255:24 professionals' (1) 248:25 profit (1) 299:15 program (1) 120:23 progress (4) 97:2,3,4;195:13 prohibited (5) 193:20,24;195:4; 280:23,23 prohibiting (1) 194:11 prohibition (1) 184:2 project (2) 85:6;86:15 promises (1) 226:25 promote (2) 177:17;197:15 promoted (1) 180:1 promoting (1) 207:12 prompted (1) 304:9 promptly (2) 24:23;223:9 pronouncement (1) 156:23 pronouncements (1) 156:7 proof (10) 64:5,7,19;65:3; 76:14,22;79:5;140:14; 147:22;250:15 proper (2) 59:11;60:11 property (13) 79:12;84:22,22; 144:1,3;145:7,13; 146:16,18,19;148:1; 224:18,19 proponent (5) 187:20;193:24; 208:6;214:1;221:10 proponents (7) 110:5;153:1;179:17; 212:14;255:7;298:21; 299:1 proposal (4) 217:17;228:14,16; 278:21 propose (1) 101:24 proposed (11) 97:15;144:25;153:7; 157:9;159:2,11; 186:13;209:19;211:12; 233:8,9 proposes (1)	278:8 proposing (1) 208:15 prorated (1) 118:23 prosecute (1) 303:4 prosecution (1) 37:3 prosecutions (1) 36:19 prospect (1) 207:21 prospective (1) 212:10 protect (4) 56:20;271:20,20; 288:22 protected (4) 62:9;76:23;206:9,11 protecting (1) 26:24 protection (1) 208:10 protective (1) 166:1 prove (2) 208:5;265:5 proved (2) 267:13,15 proven (1) 287:18 provide (6) 63:13;114:4;116:22; 204:8;255:1,2 provided (4) 41:3;52:25;143:7; 289:17 provides (2) 194:7;223:5 providing (1) 138:3 proving (1) 66:6 provision (15) 22:22;104:11; 106:24;146:6;149:3,7, 13;152:7,9;169:12; 195:4;212:8;239:9; 244:18;298:17 provisional (2) 174:9;285:11 provisions (17) 31:22;109:6;130:11; 137:11;154:18;168:1, 2;196:2;205:17;207:1; 212:9;213:16;228:20; 277:2;290:11,13,23 proviso (1) 33:25 prudent (2) 34:13;218:17 public (9)
--	---	--	---	---

103:7;110:11;112:3; 119:20;128:15;156:5; 189:16;210:14;229:5 publicity (2) 26:25;298:21 publicly (3) 202:25;284:12;304:8 PUC (1) 166:22 PUC's (1) 49:3 pull (2) 189:24;190:5 pulled (1) 256:7 punchline (1) 206:11 punitive (1) 69:9 purely (1) 222:22 purport (2) 99:6,7 purported (1) 111:17 purpose (5) 26:20;43:16;84:21; 169:11;170:14 purposes (19) 40:18;76:17;109:1; 114:16;118:11;127:15; 148:3,19;149:11,24; 152:25;153:13;157:11; 161:15;169:21;179:17; 190:24;208:1;308:16 pursuant (2) 106:1;118:3 pursue (2) 70:12,13 push (3) 46:25;197:11;200:10 put (38) 18:17;22:8;25:5; 27:5;37:2,10;42:14; 59:9;71:18;73:18;74:2; 11,19;83:13;89:22; 92:16;103:18;148:10; 150:10;153:24;154:3, 14;156:18;163:5; 183:8;184:9,18,19; 186:2;188:8;215:11; 220:13;222:19;249:14; 258:25;292:14;302:18; 310:23 puts (3) 144:25;157:24;174:8 putting (6) 36:19;44:7;80:13; 150:13;201:25;287:17	146:4 qualify (3) 132:13;192:14,17 quantifies (3) 118:5,6,11 quarrelling (1) 29:17 quick (4) 76:2;131:20;154:2; 303:20 quickly (4) 149:19;205:9; 233:13;263:3 quite (17) 19:19;37:5;41:14; 56:24;68:5;78:24;94:2; 103:11,11,20;112:22; 142:7;265:1;267:24; 296:3;301:2,4 quo (1) 166:20 quote (2) 161:5;291:15 Qureshi (9) 160:19,20,21;161:9, 24;162:6,8,12;296:2	ramping (1) 43:18 ramps (2) 268:22;275:3 Randall (1) 241:7 range (2) 207:22,23 rate (3) 107:24,25;112:24 rather (15) 37:8;38:10;98:17; 141:12;155:3;159:3; 172:7;233:2;251:20; 252:8;253:14;254:9; 295:8;301:12;302:12 rational (2) 253:18;289:9 re (2) 295:1,11 reach (3) 119:8;155:6;225:4 reached (7) 121:16;173:14,14; 222:7;293:17,17;304:2 reaching (3) 105:25;201:3;224:1 read (38) 15:14;16:17;45:4; 61:21;63:23;76:25; 86:23;97:8,8,11,25; 102:19;19:108:22; 112:1;115:12;118:10; 123:25;126:11;127:10; 128:17;130:19;133:19; 147:5;164:9;191:7,8; 203:9,15;216:7,9; 248:15,15,16;276:7,13; 277:10,14 readily (1) 296:21 reading (10) 98:22;102:20; 191:19;212:4,5,7; 248:16;270:24,25; 294:24 ready (3) 43:18;176:5;197:12 Reagan (1) 83:2 real (6) 18:24;36:24;70:16; 77:25;210:15;247:13 realistic (3) 35:15,17;37:15 reality (2) 38:8;287:25 realize (3) 94:2;188:5;238:1 realizing (1) 256:14 reallocate (1) 56:6	really (58) 16:5;21:6;29:6; 37:14,17;38:10;44:22; 70:17;74:2;99:1; 108:11;116:13;120:15; 123:18;126:13,20; 136:6;151:4;155:13; 165:18;166:13,25; 174:9;177:8,10; 179:24;186:6,6,6,20; 190:22;199:2;200:6; 210:12,12;213:5; 214:17,20;228:4; 230:1;236:11,12; 242:3;255:17;265:3; 269:3;273:7,8;274:17; 275:18;276:7;284:19; 291:3;294:4;296:3; 300:13;306:20;308:10 reargue (1) 202:10 reason (47) 25:20;28:8,8,13; 42:9;48:4;54:13;56:7, 8,20;73:13,15,23; 87:16;89:4;104:8; 110:14;111:22;123:8; 130:2;138:18;151:16; 158:4;160:2;174:1; 175:23,24,25;182:9; 200:8;204:10;206:7; 209:12;228:12,22; 236:25;261:2;262:9; 264:19,20;265:4,7; 274:19;279:15;290:6; 291:25;306:18 reasonable (7) 115:11,23;206:25; 207:21;218:4,18;289:9 reasonables (2) 207:22,23 reasonably (2) 76:16;220:1 reasons (11) 22:12;25:4;42:6,6; 178:7;228:10;279:6; 289:5;293:14;302:1,7 reason's (1) 112:22 Rebecca (1) 121:13 rebuilding (1) 223:18 rebut (1) 33:6 rebuttal (1) 30:1 recall (13) 20:11;21:5;26:10; 27:25;29:20;30:10; 111:24;124:25;144:12; 148:9;151:18;242:4; 297:24	recalled (1) 298:16 receive (2) 112:23;238:13 received (2) 121:18;278:25 recent (1) 58:20 recently (1) 52:5 Recess (2) 136:11;220:24 recite (2) 286:9;301:25 reciting (1) 294:13 reckless (1) 189:12 recognize (3) 17:17;96:12;307:6 recognized (1) 13:10 recognizing (1) 228:19 recommencement (1) 175:11 recommend (1) 233:1 recommendation (3) 99:8;225:2;301:13 recommended (1) 217:17 recommending (2) 247:2;252:15 reconsiderations (1) 159:17 record (27) 17:18;35:11;41:23; 49:19;63:4;92:13; 95:13;124:14,15; 142:3;143:17;144:5; 153:24;155:23;160:21; 165:20;187:12,13; 276:3,9,18;278:17; 302:1,2,5;303:11,13 records (1) 67:18 recount (1) 271:17 recourse (2) 52:25;60:10 recover (4) 21:23;24:23;60:6,13 recoveries (1) 42:17 recovery (27) 12:4;13:17;14:16; 15:2;16:11,15;17:14; 18:2,5,6;19:9,10; 21:20;22:20;24:4,6,8, 25;33:11,11;35:3; 39:19;59:18;60:10; 201:2;234:10;260:23
Q	R			
qualified (1)	rail (2) 160:11;162:3 rails (4) 125:22;160:1; 173:23;206:8 raise (11) 20:19;70:14;128:18; 169:16;192:12,13; 204:10;211:25;212:12; 222:15;307:4 raised (28) 9:20;69:13;81:25; 103:23;105:18;110:1; 126:19;127:2;128:11; 129:4;130:5,14; 151:11;153:12,17; 157:4,7;164:16; 165:12,25;185:23; 212:12;225:11;240:21; 282:16,17;290:9; 297:24 raises (3) 129:10,20;149:6 raising (2) 109:23;232:3 rally (1) 186:2 ramification (1) 284:23 ramifications (3) 185:21;264:21; 279:25 ramp (1) 44:10			

recovery's (1) 15:14	85:14,17;87:20;90:8; 93:14	226:24	replaced (1) 66:17	147:5,6;189:24; 282:11
red- (1) 248:2	rejected (2) 86:5;93:15	remaining (4) 106:1;110:9;113:9; 140:19	reply (7) 62:24,24;74:6,7,9,12, 14	requisites (1) 285:2
redirect (1) 59:14	rejecting (2) 78:16;82:16	remediation (2) 169:18;250:20	report (1) 104:12	rereview (1) 239:15
red-letter (1) 11:14	rejection (2) 82:13;83:14	remedies (4) 63:6;69:6,8;73:18	reported (1) 103:21	res (1) 149:12
reduce (1) 188:16	rejects (1) 80:25	remedy (6) 71:12,21,22;78:22; 87:2,5	reporting (3) 156:9;160:25;161:1	reservation (8) 127:17,25;153:19; 154:19;162:22;164:9; 166:23;181:1
refer (1) 234:23	relate (1) 235:15	remember (12) 13:20;94:2;104:24; 150:3;217:23;249:8; 251:12;262:22;264:14; 268:25;269:4;300:3	reports (3) 156:6;161:5;287:17	reservations (2) 164:18;180:23
reference (5) 68:4;76:19;113:25; 121:25;122:4	related (1) 106:22	remembering (1) 273:10	repository (1) 40:24	reserve (11) 30:1;34:15;127:20, 22;163:11;164:21; 166:20;185:7;220:17; 227:3,16
referenced (2) 161:12;279:4	relates (2) 107:7;277:6	remind (2) 111:18;144:6	represent (15) 9:9;30:15;71:2; 134:19,22;145:9; 154:22;219:12;224:12, 15,16,18,22,25;254:5	reserved (6) 98:23;130:15; 158:12;165:21,24; 305:11
references (2) 270:5;273:3	relating (2) 86:6;220:14	reminder (1) 13:4	representation (2) 33:9;274:11	reserves (1) 123:18
referencing (1) 273:18	relative (2) 9:20;11:8	remove (1) 297:6	representations (2) 58:25;60:4	reserving (2) 128:18;136:5
referred (2) 119:4;121:2	relatively (1) 151:19	removed (3) 180:21;183:1;235:22	representative (6) 25:18,24;170:19; 173:5;217:11;220:6	resolution (50) 10:7,18;14:6;19:2,3; 22:6;25:6,10;27:13; 37:22;61:23;62:6; 63:25;64:5;91:9;99:4; 105:24;106:3;110:13; 111:6;113:6;121:11; 127:6;136:4;148:12; 151:6;154:11,13,18,21; 155:5,6;157:6;202:1; 213:1,16;225:18,22; 226:1,6,7;248:3; 249:14;252:21,23,25; 291:24;293:17;298:21; 309:2
refineries (1) 20:18	release (7) 106:13,15,19;122:3; 150:23;201:7,7	removing (1) 190:18	representatives (5) 103:22;109:22; 221:13;280:22;297:20	resolve (9) 37:16,19;45:25; 84:18;258:11;266:24; 289:18;309:17;310:14
refinery (4) 11:17;19:16,21; 47:15	released (1) 121:21	render (1) 276:9	represented (10) 34:11;47:9;72:18; 113:4;140:11;217:16; 219:10;225:7;274:16; 299:13	resolved (14) 22:14,15;31:8;67:24; 87:17;106:12,16; 107:11;110:10;121:24; 155:8;164:20;218:11; 244:21
refinery's (2) 13:14;20:19	releases (16) 101:14;107:3; 128:12,13,14;166:1,2; 201:11;294:7,8,20,24; 295:4,5,14,24	rendered (1) 108:3	representing (7) 24:17;39:9;126:18; 151:11;252:14;300:7; 301:5	resolves (5) 110:9;116:25;123:6; 289:20,21
refresh (1) 148:9	relevance (1) 162:9	renders (1) 211:12	represents (2) 132:2;217:10	resolving (1) 144:16
regard (3) 40:18;45:16;144:22	relevant (14) 38:22;41:14;46:4; 127:16;130:12;161:14; 191:13;215:4,11; 240:24;273:24;276:17, 18,25	renegotiated (1) 139:24	request (4) 9:11;30:16;41:5; 63:12	resources (1) 66:8
regarding (1) 120:10	relied (1) 60:3	reopen (2) 258:17,18	requested (2) 35:22;152:9	respect (34) 59:1;86:7,10;96:20; 106:13,15,18;107:20; 109:9;113:10,14;
regardless (4) 98:10;207:19;235:6; 282:12	relief (51) 10:5,6,12;11:18; 13:13;15:3,19;16:4; 17:13;19:8;20:15;25:7; 26:7,7,19;29:11,15,25; 30:15,19;33:10,25; 34:6;47:24;50:9;51:19; 52:23,24;56:8;59:25; 60:3;61:22;62:2;63:20; 64:18;71:21;76:7;79:3; 80:2;81:4,22;87:5,21; 88:7;90:6,11;91:4; 93:5;114:3;119:9; 142:21	reopened (1) 247:22	requests (2) 19:25;40:22	
regular (1) 63:19	reliefs (1) 144:11	reopening (1) 258:18	require (5) 63:19;97:16;200:4; 228:20;240:19	
regulators (3) 229:13;231:1;238:11	rely (2) 66:18;205:2	reorganization (7) 56:12;100:23; 138:13;187:19;195:5; 230:17;251:23	required (5) 62:23;89:19;108:25; 190:5;229:13	
regulatory (1) 224:8	remain (1)	reorganize (1) 252:5	requirement (2) 158:6;202:2	
reinforced (1) 80:24		reorganized (9) 33:13;135:5;142:20; 209:19;223:9;234:24; 250:8;251:4;252:1	requirements (6) 96:7;105:7;112:6; 225:6;228:25;238:2	
reinstated (2) 69:5;211:18		repair (1) 77:4	requires (4) 120:13;144:23; 175:10;177:12	
reinstatement (1) 69:7		repeat (4) 110:2;209:9;266:17; 274:24	requiring (4)	
reinvent (2) 136:3;143:4		repeating (3) 172:12;182:13,14		
REISNER (6) 254:1,4,4,11,13,15		repetitive (1) 180:17		
reiterate (1) 39:18		rephrase (1) 51:13		
reject (20) 77:25;78:4,21;79:7, 17;80:4;81:5,7,15,21; 82:8,22;87:15,17;88:2, 6;90:7,15;91:5;93:5				
rejectable (5)				

124:22;133:9;150:23; 164:12,22;167:23; 170:11;190:12,12; 191:1;195:17;205:2; 208:20;223:3;225:12; 266:17;268:21;273:19; 21;278:14;283:22; 295:12;310:13 respected (1) 13:9 respectfully (3) 41:5;153:13;233:16 respective (1) 113:7 respects (2) 246:24;295:13 respond (10) 19:25;87:23;88:10; 93:13;136:20;141:9; 156:17;187:3;248:19; 257:17 responded (4) 47:2;141:10,16; 297:25 responding (1) 40:23 response (14) 20:8;23:22;58:20; 66:22;84:15;88:5;93:2; 6,8,13;98:22;103:8; 164:17;282:23 responses (3) 63:22,22;98:23 responsibility (3) 99:10;100:19;230:1 responsible (1) 299:22 rest (6) 14:21;24:3;53:22; 103:15;139:15;251:3 restart (1) 176:2 restate (1) 182:12 restating (1) 66:21 restrictions (1) 198:21 restrictive (2) 201:13;202:8 restructuring (7) 9:20;97:18;212:6; 216:4;217:24;218:1; 255:25 result (18) 20:23;36:22,23;48:4; 49:9;53:21,25;54:2; 59:2,11;98:13;101:2; 106:7;219:16;226:14; 234:6;284:25;291:8 resulting (1) 133:14 resume (3)	8:24;102:5;135:21 resumes (2) 46:8,12 retaliation (2) 69:14;70:14 retention (1) 23:13 retired (2) 105:22;106:11 reveal (2) 236:8,10 reverse (1) 285:9 revert (1) 207:5 review (5) 83:8;127:3,4;154:16; 302:11 reviewed (2) 131:7;216:3 reviewing (1) 43:20 revised (1) 108:2 revisit (5) 25:20;130:10; 143:14;148:13;263:22 revisited (1) 71:15 revisiting (2) 26:15;70:20 rid (1) 234:9 Riddle (3) 243:17;253:9,9 ride (1) 140:21 Rifkind (1) 166:22 Right (313) 8:14;9:11,23;10:21; 11:8;13:16;14:18,20; 15:4,6;16:3,7;18:1,10, 21;19:16;20:13;22:23, 24;23:4,15,17;24:4,11; 25:13;27:7,10,10;28:4; 30:1,5,6;31:4;32:1,9, 23;34:7,9;38:3,4,5; 40:4;41:15;42:4;43:2, 8;44:2,24;45:7,17; 46:20;48:7;49:8;50:17, 21;51:3,21;52:9;53:7, 8,20;54:3;55:6,18; 56:9,15;57:4,24,25; 58:4;59:2;60:5;61:1, 11,16;62:11;63:5;64:7, 22,22,22,24;65:5,5; 66:12;67:3,19,20;68:2; 70:1,21;72:14,22; 73:12,23;74:14;76:8; 18;77:4;79:8,21;80:12, 15;81:1,14,17,19,19, 21;83:18,18,18,20,24;	84:17,24;85:20;86:7,9; 87:6,13,15,17;90:6,7, 13;92:7;93:1;95:6; 96:5;98:8,19;99:3; 100:2,9;101:9,9,22; 103:17;104:12;105:2, 9;107:1;108:21;109:4; 114:25;115:24;116:8, 18;117:15;118:20; 119:21,25;122:11; 125:24;127:20;128:18; 132:4,21;133:24; 135:14;136:25;139:10; 141:17;142:12,14,22; 143:1,3,12;144:17,17; 147:18;148:8;149:5; 150:12,22;151:25; 157:19;158:10,16,17, 18,19,20;160:5,6,12; 161:6;162:7,23; 163:24;164:11;165:25; 166:4,6,10,17;167:4, 19;168:23;169:4,5,6; 171:11,17,20;172:15; 173:2;175:8;176:25; 177:7;179:4,20,20; 186:7,11,16,21;188:3, 24;189:19;190:1; 192:23;194:13,17,22; 196:10;198:7,10; 199:5;200:13,15,18,23; 201:16,20;202:23; 206:17;207:1;208:8; 210:22;211:7,18,25; 212:1;213:11;215:23; 217:15,22;218:17; 220:21;227:2,11; 229:17,20;231:2; 232:5;237:13;239:11; 240:16,18,19,25;241:1, 15,25;245:19;247:2,5, 7;249:4;254:13; 255:16,19;258:22; 260:10,25;261:8; 262:10;263:5,11,15; 267:23;268:14,14; 270:6;271:5;273:7; 274:25;279:18;282:5, 20;283:7;284:2,12; 286:14,21;290:15; 293:8;301:7,7,16; 305:8,17;306:13,21; 307:23;308:21,24; 309:5,6;311:3 rights (21) 62:4;72:24;73:16; 86:22;109:8;127:21, 22;128:1;153:19; 158:13;162:22;163:12; 164:21;166:23;181:1; 220:17;223:25;267:9; 290:3,3;305:11 rise (5)	8:4;15:12;136:12; 220:25;288:1 risk (6) 138:4;182:6;195:14; 218:11;236:9;242:1 risking (1) 191:6 risks (3) 209:14;218:10; 262:11 road (3) 130:2;182:8;215:24 Robert (1) 10:2 robustly (1) 152:15 rock (1) 241:20 Rohnert (1) 294:25 role (20) 21:10;33:7;50:8,10; 53:4,9,10,18;99:25,25; 131:2;133:21;134:4; 154:5;155:13;160:8; 185:18;214:6;300:10, 15 roll (4) 126:2;162:13;180:8; 301:17 rolled (1) 133:13 Ron (1) 75:20 Ronald (1) 83:2 room (9) 51:14;100:19;192:9; 213:14;224:14;264:23; 299:12,16;309:10 round (1) 121:18 routes (1) 233:25 routine (4) 300:17,18,20,21 Royal (2) 294:17;295:2 Roye (25) 136:24,24,25;137:1, 4;138:14,16,18,21,24; 139:1,7,13,19,23; 140:2,6,8,19,21;141:2, 4,7,8;142:6 RSA (187) 15:13,17;16:1;21:11, 11;37:25,25;51:25; 57:6;58:24,24;93:22; 94:10,14,19,21,24; 96:20;97:24;98:23; 99:9,11,22;101:12; 103:25;104:10,18,20; 105:19;106:13,18;	108:9,20;110:3,8,13, 21,24;113:23;115:12, 13,14;116:2,13,24,25; 118:15;123:1,6,9; 124:1;125:20;127:25; 128:16;129:13,14,16, 19,23;130:1,20;131:13, 23;132:12;134:5; 136:8,16;137:11,24; 142:9;144:7,23;145:5, 11;147:6;150:21; 151:19;153:11;156:19; 157:7;158:9;159:10, 13,16;160:7;161:20; 162:1;164:17;165:16, 21;166:2;167:24; 168:4;169:1,7;175:17; 176:1,24;178:14; 179:2,10,12,15,24; 180:24;182:20;183:23; 196:17,18;197:21; 200:8,13;201:13; 204:13,22;205:15,16; 206:20;207:4;212:5; 215:9,11,16;216:2,4, 19,20;217:4,23,24; 219:21,22;221:10; 222:8;224:1;225:2,25; 231:7;235:20,21; 237:7,19;239:17; 241:19;248:4,17; 251:6,17,19;253:3; 259:14,20,20;260:13, 15,15;261:12;262:6; 265:25,25;266:2,21,22; 269:12;274:15;284:17; 286:19,19,22;287:2; 289:17,18;292:3; 293:14,20;294:6,8,10; 295:6,7;296:3;298:1,5, 7,15,15;305:14 RSAs (17) 124:12;168:2; 206:24;258:10,24; 259:6;266:21;275:1,4, 5;285:10;290:7,9; 293:12;295:24;302:7; 308:14 RSA's (2) 15:24;288:1 rubber (1) 230:15 rubberstamp (1) 96:12 rubber-stamp (1) 287:4 ruined (3) 137:12;138:9;139:18 Rule (14) 32:5,15;103:25; 122:20;143:6;149:1, 13,21;159:16;165:23; 207:14;259:18,25;
--	---	--	--	---

266:5 ruled (2) 164:21;165:17 rules (7) 80:5;90:19;99:25; 127:9;149:20;151:12; 245:20 ruling (26) 15:16;61:11,13;71:3; 74:20;87:24;106:20; 108:8;122:13;125:1, 18;141:21;145:15; 188:14;211:6;258:8; 259:16;260:4,5; 276:23;293:7,8,20; 302:25;303:25;305:4 rulings (4) 108:2;113:10; 124:21;295:22 run (6) 8:22;79:5,5;122:7; 126:1;146:12 running (3) 216:23;280:25;281:2 runs (1) 236:24 rush (2) 123:16;137:14	SAN (10) 8:1;130:16,19; 132:22;133:14;160:8; 214:3,12;220:5,13 satisfied (10) 58:13;59:20;101:12; 153:21,21;167:20; 201:20;225:6;292:9; 295:23 satisfy (14) 105:7;112:5;140:7; 182:9,10;192:17,19; 194:24;195:10;202:2; 226:10;235:7;250:19; 263:21 satisfying (1) 278:19 Saturday (1) 109:25 sauce (2) 242:9,10 saving (1) 129:16 saw (8) 58:18;94:8;97:12; 137:22;152:6;223:14; 237:20;253:24 saying (44) 17:13;30:19;36:12; 50:4;53:2;58:16;63:5; 64:1;65:24;66:5;67:7; 71:4,6;79:22;83:2; 87:18;97:24;99:2,12, 24;103:19,20;148:2; 153:18;161:19;166:25; 173:8;176:13;180:8; 186:1;196:17;199:2; 202:19;218:13;225:16; 236:17;238:24;244:16; 257:5;272:3;273:25; 280:15;301:4;308:12 scattered (1) 139:15 scenario (3) 175:12;178:25; 292:19 scenarios (2) 159:5;256:22 scene (1) 71:9 schedule (9) 31:3;34:25;35:21; 44:15;123:10;131:17; 305:16,21;306:5 scheduled (2) 116:6;305:6 score (1) 297:15 screamed (1) 244:8 se (1) 80:21 sealed (3)	119:13,23;132:6 seat (2) 60:21;151:13 seated (2) 136:14;221:1 second (17) 8:21;29:10;86:23; 91:24;152:15,20,23; 178:21;179:5;233:15; 255:20;262:19;269:2; 271:25;292:7,8;296:1 second-guess (2) 300:10,22 second-guessed (1) 128:2 secondly (3) 19:4,13;27:21 seconds (1) 183:2 secret (1) 67:9 section (8) 32:2;105:7;120:25; 121:22;122:1,3;251:7; 286:19 secured (1) 242:13 securities (1) 130:15 security (9) 223:25;224:8,13; 225:5;228:15,19; 231:18;240:7,16 seeing (2) 29:20;204:9 seek (8) 13:17;29:15;41:7; 69:8;144:24;145:10; 170:2;302:11 seeking (2) 29:11;292:17 seeks (2) 87:5;148:18 seem (5) 99:8;127:24;130:10; 215:3;261:3 seemed (2) 97:22;166:19 seems (16) 15:14;26:15;28:17; 41:13;54:9;79:8;82:8; 118:10;126:13;130:24; 136:4;137:14;146:5; 167:12;210:10;231:12 segue (1) 275:25 seize (1) 287:21 selection (1) 144:25 self-care (1) 38:14 self-destruct (1)	174:4 self-insured (2) 23:13;60:7 self-interested (1) 227:14 self-serving (1) 188:6 Seligman (8) 31:2;35:14,20;36:2; 37:16;44:14;46:19; 59:22 sell (4) 138:2;236:21; 280:24;297:5 selling (3) 267:21;281:12,13 seminal (3) 294:15,15;295:3 send (7) 22:7;43:19;44:14; 122:14;151:14;259:15; 294:18 sending (3) 44:23;46:22;238:5 senior (9) 111:13,13;176:4; 177:16;178:5;187:14, 16;209:5;276:3 sense (7) 14:8;72:3;136:2; 152:1;211:8;234:22; 290:10 sent (3) 13:20;26:4;243:22 sentence (5) 97:14;150:3;231:12; 238:4;291:5 separate (6) 29:14,23;86:2;131:3; 272:7;302:7 separated (1) 137:5 September (2) 20:9;22:10 seriatim (1) 252:22 series (1) 157:21 serum (1) 188:8 serve (1) 39:8 served (2) 59:21;285:7 serves (1) 39:10 service (1) 138:3 serving (1) 40:20 session (3) 8:4;260:1;310:21 set (19)	10:18;45:5;71:1; 89:8,19;133:8,9; 147:21;152:12;164:13; 168:25;169:14,16; 175:13;188:2;242:5; 258:20;267:11;268:11 sets (1) 304:15 setting (3) 169:19;177:3;195:18 settle (10) 51:15;158:23; 161:11;171:13;179:16; 189:7;191:12;206:19; 208:15;262:12 settled (7) 150:20;157:18; 158:25;163:7;170:11; 189:10;279:21 settlement (77) 10:24;20:23;30:7,8; 44:8,9;96:22;97:15; 99:4;105:25;119:8; 131:23;132:17;133:16; 134:15;147:5;152:22; 155:1;157:10,11; 158:2,3,4,14,18; 161:17;169:12,22; 170:8,11;171:25; 173:14;174:9,10,13,19; 177:4;178:23;179:2; 180:3,3;183:15; 185:12;187:24;189:17; 190:10,17,17,18;201:1, 23;203:12;207:21; 208:14;219:6;222:16, 16;224:13;242:3; 247:14;256:7;260:10; 262:9,9;269:12; 272:11;278:15;286:18, 20;289:18;291:9,11; 292:11,13,13,15; 308:13 settlements (14) 96:15;117:11,12; 133:11;161:14;179:16; 182:7;191:13;198:25; 206:6,24;258:14; 259:2;262:12 settling (4) 180:22;182:4;203:4; 205:11 seven (4) 38:15;137:5;189:3; 279:20 seventeen (2) 223:1;309:1 seventy (8) 11:16;25:8;42:21; 134:19,19;221:13; 252:14,14 severable (2) 86:3;272:7
S				
Sacramento (2) 109:25;230:6 saddle (1) 19:3 safe (2) 85:1;250:24 safety (5) 84:24;86:18;130:18; 204:12;237:22 Sam (6) 12:23;13:1,25;19:4, 18;35:12 same (66) 11:18;14:7;19:16; 25:16,21;26:15;36:19; 37:25;50:6;56:24; 64:14;86:25;114:17, 17,19;115:13,25;117:4, 4;127:22;129:6;130:6; 158:16,18;163:21,21; 164:3;166:3;167:22; 169:2;170:21;174:7; 176:4,25;184:11,17; 185:1;186:3;192:21; 193:10;196:1;206:2,4; 211:9;217:5;232:20, 20,21,21;234:5;235:4, 5;240:14;242:23; 246:1,24;249:20,22; 262:16;269:6;294:8; 295:1;296:4;301:4; 302:9;310:16				

several (7) 102:7;107:15;179:1, 15;225:21;248:12; 277:1	250:14;251:4;268:8,8	simplifies (1) 90:18	snippets (1) 276:8	35:3;66:19;71:10; 75:3;76:5;90:14; 105:14;146:17;156:25; 159:22;211:3;214:13; 233:19;237:9,14; 238:22;256:25;307:6, 7;308:7;310:9
severe (1) 180:23	showed (1) 294:8	simply (19) 11:21;13:11;21:13; 22:21;27:12;29:20; 41:19;45:4;69:14; 111:16;118:11;134:13; 135:9;136:4;153:11; 164:18;172:4;188:25; 258:16	softer (1) 275:2	sort (17) 46:23;62:20;99:20; 100:24;127:14;141:14; 147:25;150:13;153:16; 156:21;167:16;170:13; 184:21;215:8;234:16; 265:11;286:21
shall (6) 20:24;32:3;74:14; 212:6;234:4;271:1	shown (1) 11:12	sincere (1) 221:15	sole (1) 52:25	sorted (1) 126:23
shape (1) 21:19	shows (1) 277:3	sincerely (3) 134:10;228:7;244:25	solely (1) 60:11	sorts (2) 152:1;219:15
share (3) 11:17;33:7;194:17	shuffle (2) 186:23,24	single (3) 146:6;190:8;242:3	solicit (2) 185:1;284:24	sought (5) 29:25;34:6;87:21; 105:23;119:10
shareholder (2) 174:13;194:19	shut (1) 195:14	Singleton (1) 243:17	solicitation (2) 239:22;282:21	sound (2) 217:3,5
shareholders (1) 194:20	shutdown (1) 56:5	sit (2) 185:16;310:20	solution (6) 59:19;135:3;181:6; 186:13;298:2,3	sounds (6) 79:4;87:9;88:11; 97:21;183:10;301:3
shareholder's (1) 207:13	sic (8) 60:18;126:25; 143:25;215:25;249:19; 252:12;261:1,2	sitting (4) 27:13;50:6,7;229:23	solve (10) 81:2,12;83:23;88:16; 92:23;152:2;179:12; 183:1;259:6,8	soup (1) 79:8
sharing (1) 21:20	side (18) 19:21,21;31:1;87:16; 88:9;148:9;184:19; 192:22;196:17;207:13; 213:14;214:2;227:11; 229:17,24;261:11; 286:21;310:17	situation (16) 21:4;38:18;60:10; 64:12;65:13;68:2,3; 76:21;80:12;85:4; 129:17,18;153:15; 233:17;267:1;298:1	solved (1) 218:16	sovereign (1) 288:19
sheet (1) 113:24	sides (4) 67:18;170:13; 181:15;301:15	six (2) 273:10;279:20	solvent (6) 23:6;267:6;274:22; 297:17,18;298:10	space (1) 267:12
shifting (1) 147:22	sign (9) 60:2;107:3;120:23; 124:2;153:15;179:2; 207:3;249:3;302:11	six-page (1) 248:14	somebody (20) 12:11;14:17;18:17; 72:18;76:24;80:20; 101:15;135:23;147:14; 148:18;162:2;203:19; 208:6;234:8,25; 245:12;271:16;280:24; 297:2,3	speak (13) 59:1;84:12;164:18; 166:20;170:23;186:4, 5;191:24;196:5;209:2; 258:2;282:4;302:20
Ship (68) 8:12;9:3,10,17;10:6, 7,13,19,23;11:1,12; 12:16;13:5,8,14,25; 14:24;15:9,11,14,17; 16:5,11;18:2;21:4,12, 21;22:8,11,18,19;23:1, 19;24:2,7,17;26:4; 27:24;28:1,13,14,18; 32:5;35:6;37:15;38:8; 39:8,14;40:10;49:6; 50:11;51:15,22;52:1, 17;53:5,54:1,19;55:1, 5;58:3,8,22,23;59:3,9; 123:15;223:14	signatory (1) 210:19	sixteen (4) 131:23;132:5; 133:18,25	someone (17) 16:14;58:14;62:8; 64:9,16;65:17;115:8; 162:3;170:8;191:19; 202:4;207:13;215:3; 250:17;278:20;282:17; 307:5	SPEAKER (8) 75:16,19;95:1; 248:14;273:15,18; 274:2,6
short (18) 61:20;63:4;83:5; 94:1;102:2;107:4; 118:23;119:19;122:7; 128:7;154:4;198:19; 208:23;219:14;277:14; 286:2,8;304:16	signed (4) 104:9;145:5;224:24; 277:17	sixty (1) 24:3	somehow (6) 49:1;82:9;206:15; 250:7;296:9;297:21	speaking (4) 35:5;84:6;177:11; 193:24
shortcuts (1) 216:1	significance (1) 264:18	size (1) 21:19	somebody (20) 12:11;14:17;18:17; 72:18;76:24;80:20; 101:15;135:23;147:14; 148:18;162:2;203:19; 208:6;234:8,25; 245:12;271:16;280:24; 297:2,3	speaks (1) 166:24
shortest (1) 108:23	significant (12) 37:10;58:21;65:17; 66:7;109:15;156:10; 169:15;179:8;186:13; 209:14;211:18;310:8	sky (1) 185:22	somehow (6) 49:1;82:9;206:15; 250:7;296:9;297:21	specific (15) 30:9;60:6;79:12; 81:9;83:17;86:3;87:12; 98:25;102:7;121:25; 127:11,18;129:16; 130:19;183:20
shortfall (2) 226:12,14	significantly (1) 86:14	sledgehammer (1) 196:15	someone (17) 16:14;58:14;62:8; 64:9,16;65:17;115:8; 162:3;170:8;191:19; 202:4;207:13;215:3; 250:17;278:20;282:17; 307:5	specifically (4) 60:2;103:16;260:3; 308:10
shortly (3) 151:20;203:23; 304:19	signing (3) 224:23;228:18,21	slice (1) 43:10	sometime (3) 136:9;159:10;262:21	specifics (3) 85:3;112:7;117:21
shots (1) 253:23	signoff (1) 108:25	slimed (1) 219:12	sometimes (6) 47:11,12;66:1,1; 240:1;290:14	specified (1) 143:6
shoulder (1) 152:7	signs (1) 216:4	slight (1) 304:21	somewhat (2) 170:15;189:12	speculate (1) 191:15
show (11) 11:2;87:19;135:15; 178:6;216:4,23;217:3;	similar (7) 73:2;87:22;163:3,19; 164:16;166:19;235:4	slightly (1) 237:13	somewhere (3) 22:15;32:10;232:17	spell (1) 128:4
	similarly (1) 215:2	slip (1) 266:14	song (1) 199:15	
	simple (5) 18:17;33:22;116:10; 282:15;287:3	slip-and- (1) 33:22	soon (3) 135:16;161:3;259:9	
		Slocomb (4) 12:17,20;39:9;58:4	sooner (3) 37:8;38:10;302:12	
		slow (1) 257:9	sophisticated (4) 222:10;232:13,15; 291:12	
		small (2) 137:25;308:25	sorry (21)	
		smaller (2) 59:16;259:4		

spend (11) 43:17,20,21;46:23; 54:5,10;56:6;152:10; 294:4,5,21	302:14,23,24;303:2,6, 9,11,14	307:11	259:24;266:23;267:19	25:17
spending (7) 52:11;54:4;59:13; 168:16;191:5,5;255:18	Stamer's (3) 210:13;234:3;301:1	stated (10) 29:15;64:20;127:19; 130:16;151:1;171:12; 172:1;218:9;286:11; 302:1	Stephen (1) 288:6	Strauss (1) 160:21
spends (1) 38:13	stamp (1) 230:15	statement (32) 43:8;84:4;97:8; 101:11;102:25;108:15; 109:11;114:11;122:24; 137:23;143:21;151:8; 152:8;164:12;175:13, 21;179:7;197:13; 214:15;219:15,19; 220:14;229:4;239:22; 269:17;270:17,23; 277:11;278:22;282:2; 284:14,24	steps (2) 185:8;285:11	street (1) 287:5
spent (7) 48:11,13;57:23; 293:4,5;294:24;309:10	stand (17) 66:9;96:24;100:11; 112:23;156:10;180:25; 194:2;199:15;217:24; 230:11;241:19;255:11; 257:2,3;276:7;278:20, 22	statements (7) 13:7;143:17;163:5; 165:19;254:7;282:3; 301:2	Steve (1) 243:16	strengthening (2) 234:23,24
spirited (1) 116:23	standalone (1) 199:3	states (9) 20:21;32:2;127:23; 128:5,8,11;140:10; 165:2;294:9	stick (5) 126:4;131:17; 205:19;224:25;295:15	stretch (3) 150:8,9;183:9
sponsor (1) 235:6	standard (2) 13:10;155:1	Station (1) 295:18	sticking (1) 301:12	strike (1) 231:16
sponsored (3) 173:25;229:10; 301:17	standards (1) 182:10	status (9) 56:19;116:1;164:13; 166:20;204:19;276:15; 277:3;286:13;287:22	stifle (1) 170:15	strikes (2) 212:13;216:2
sponsors (2) 134:16;222:9	standing (7) 76:18;214:11; 230:25;252:9;253:24; 282:24;310:15	statutory (6) 62:9,12,18;68:4; 71:23;72:6	still (52) 16:1;22:16;33:3; 36:20;42:5;43:14; 44:16,23;45:10;46:3; 50:2,5;51:2,16;55:20; 57:8,13;58:9;100:19; 101:15;105:3,4; 106:19;108:13;109:5; 122:23;123:24;145:6; 148:6;164:22;167:13; 180:6;184:2,6;197:2; 199:16;206:16,16; 223:17;231:13;246:25; 255:25;256:17;259:22; 260:11;261:3;265:1; 284:16;301:18;303:4; 305:15;308:3	strokes (1) 246:19
square (4) 174:8;183:6;231:17; 262:6	standpoint (1) 218:6	stay (72) 10:6,7,12;11:18; 13:13;15:19;16:4; 17:13;19:8;25:7;26:7, 7,20;29:11;30:15,20; 33:10;37:6,8,12,14,21; 40:5,17;41:6;42:7,10, 14;43:11,14,23;44:9; 46:15;47:24;50:1,9,16; 51:19;52:10,24,24; 53:7,11;56:8;59:17,25; 60:3;62:2;63:10,20; 64:18;72:23;76:7,17, 19;79:3;80:2;81:4,23, 23;88:7,19;91:4;93:5; 157:5;159:6,7,9; 160:25;203:22;234:21; 242:23	strong (1) 97:22	struck (2) 86:23;139:5
Stacy (1) 64:19	stands (4) 49:10;125:17; 147:18;237:5	stayed (5) 45:10;47:6;176:12; 178:21;179:6	stip (4) 92:8,9,13,13	structural (1) 179:9
staff (1) 126:6	stark (1) 258:13	staying (1) 80:24	stipulate (3) 92:2;254:12;310:3	structure (5) 180:24;214:23; 218:10;234:7;269:6
stage (2) 70:22;242:12	Stars (1) 256:10	stays (1) 159:24	stipulated (2) 159:11;201:25	structures (1) 256:20
stakeholders (2) 140:17;288:22	start (20) 17:13;22:9,10;25:12; 40:2;54:3;72:5;88:24; 96:1;132:20;136:18; 146:6;156:8;187:23; 221:5,5;223:18; 236:20;258:20;276:2	step (9) 48:2;73:22;141:13; 206:23;207:4;252:2;	stipulation (11) 20:9,10,12,21,22; 21:5;47:25;89:21; 121:17;204:20;307:15	struggle (1) 129:23
Stamer (159) 112:14;155:16,18, 21,23,23,24,25;156:16; 160:16;162:8;183:19; 185:22;186:4;187:11, 13,14,22;188:4,15,17, 21,25;189:3,20;190:2; 191:22;192:1,5,9,16, 23,25;193:7,12,17,19, 22;194:1,9,13,21,23; 195:1,3,8,22;196:3,12, 15,24;197:7,18,20; 198:2,7,10,12,14,21; 199:5,7,19;200:1,4,7, 16,18,23;201:1,6,22; 202:17,21,23,25; 203:25;204:3,6,24; 205:2,7,11,23;206:3,5, 19,23;207:10,19,24; 208:2,9,12,17,25; 209:1;234:13;235:7; 238:22;258:17;275:17, 20,23,25;276:2,3,19, 22,24;277:9,14,19,21; 278:5;279:2,12,14; 280:2,8,17;281:1,3,7, 10,13,15,19,21,23,24; 282:6,8,10,16,21; 283:4,9,14,17;284:5,8, 9;285:4,13,15,21,23; 288:14,24;299:7;	started (5) 76:24;83:6;147:5; 189:16;266:19	stays (1) 159:24	stip (4) 92:8,9,13,13	struggled (1) 15:15
	starting (8) 9:3;71:22,24;73:21; 113:24;200:14;231:4; 259:13	staying (1) 80:24	stock (22) 114:18;135:5; 137:12,23,25,25;138:8, 13,16;142:7,10;202:1, 15;222:12;225:13,15, 17,17;232:18;250:23; 298:10,11	struggling (3) 88:13;264:6;265:3
	state (61) 17:17;22:7;29:25; 31:22;37:10;42:11; 44:12,17,18;53:12; 62:9,12,21,21,22;64:6; 65:14,22,24;67:16; 68:8;69:9,13,17;70:20; 71:15,23;72:6;75:22; 76:11,19;79:20;81:1,6; 82:3;86:13;88:13; 89:10;98:5;99:7;109:5; 127:22;142:4;155:8; 162:21;163:8;187:12; 209:10;220:11;223:6; 229:1,14;230:2,16; 238:11,11;251:18; 279:6;284:10;303:21;	staying (1) 80:24	stock's (1) 137:20	stuff (6) 202:23;229:21; 242:6;248:15;277:2; 306:12
		staying (1) 80:24	stone (2) 115:15;242:11	stumble (3) 130:1;285:8,16
		stays (1) 159:24	stood (3) 62:8;216:17;253:2	subject (18) 62:13,14,25;112:15; 115:16,17,18;145:20; 148:6;154:15;201:13; 242:23;246:25;248:20; 252:25;274:9,13; 294:11
		step (9) 48:2;73:22;141:13; 206:23;207:4;252:2;	stop (12) 38:17;125:25; 132:23,23;168:5; 170:15;177:9;191:5; 219:18;227:2;246:18; 252:12	submit (4) 92:9;141:9;278:22; 305:10
			story (2) 19:11;67:18	submitted (5) 74:15,19;125:18; 145:10;305:9
			strategy (1)	subparagraph (1) 119:11
				subro (20) 116:12,15;129:14; 150:21;158:16,18; 167:24;168:4;182:22; 190:12;196:18;200:13; 201:1;202:10,12; 205:16;232:1;259:14;

265:24;266:2 subrogation (45) 101:3;104:20; 106:13,15,18,20;108:8; 110:11;112:3;113:3; 115:14;116:19,24; 117:1;121:15;123:2; 124:16,20;139:4; 144:7;146:14;147:8; 166:2;170:11;177:22; 222:16,19;253:3; 258:5;259:20;260:15; 261:2;274:15;289:23; 292:15;293:13;294:6; 10;295:7;296:3; 297:25;298:5,15; 305:7;306:19 subros (9) 137:24;189:20; 190:21;195:10;197:18; 199:22;202:9,15; 281:11 substantial (4) 11:7;110:21;223:10; 224:18 substantive (7) 63:13;99:21;123:19; 127:25;128:8;136:6; 156:2 substantively (1) 128:22 subtle (3) 196:13,14,15 subtlety (1) 188:4 succeed (1) 301:20 success (1) 218:4 successful (8) 59:5;62:2;106:5,5; 110:25;113:6;144:16; 262:5 successfully (4) 137:7;138:10; 148:16;289:6 succinctly (1) 29:25 suddenly (2) 149:13;238:21 Sue (6) 12:17;39:9,12;72:23; 80:20;252:9 sued (6) 80:20;137:5,10; 249:8,18;252:11 suffered (1) 41:7 suffers (1) 232:21 suffice (2) 140:8;304:9 sufficient (3)	91:22;119:6;295:16 suggest (7) 88:18;94:5;231:12; 295:13;299:22;309:14; 310:10 suggested (4) 159:8;230:23;241:5; 245:12 suggesting (4) 14:2,3;25:22;59:4 suggestion (5) 47:20;127:13;131:6; 147:13;172:14 suggestions (1) 144:18 suggests (2) 170:25;171:2 sui (1) 300:21 suing (2) 252:12,21 suit (3) 77:9;80:19;250:3 summarize (2) 154:4;162:18 summarizing (1) 17:4 summation (1) 226:17 summoned (1) 230:6 Superbowl (1) 297:14 Superior (25) 30:20;35:14;36:14; 56:25;59:3;62:17; 65:25;80:4;81:4;86:24; 87:9;88:23;89:7;90:12; 91:14;92:9,22;110:23; 111:15;132:22;133:14; 21;160:8;237:4,4 supervised (2) 155:4;229:6 supplant (1) 149:13 supplement (1) 151:8 supplemental (2) 74:1,12 support (27) 9:20;30:4;96:22; 97:17;105:15;110:17; 18;111:17,19,23;112:2; 3,21;134:23;143:23; 144:2,3,24;170:22; 187:24;189:23;202:18; 217:24;228:9,21; 255:24;275:7 supported (6) 9:19;134:18;173:25; 208:14;249:21;266:23 supporting (4) 56:14;131:14;195:5;	249:25 supportive (3) 190:10,11;203:12 Suppose (8) 26:18;53:3;67:5; 71:8;115:8;159:16; 238:15;275:7 supposed (15) 19:24;42:12;72:3; 114:2;117:5,9,13; 161:25;175:17;180:7; 185:18;236:11,12; 271:9;304:11 sure (63) 12:11;24:13;32:7; 33:17,19,24;41:18; 46:9,14;48:6,24;50:21; 60:22;61:4,24;68:12; 69:1;73:18;75:18;80:1; 97:10;101:25;107:17; 108:12,17;112:13,17; 124:15;131:22;136:21; 139:8,25;157:2;161:6; 166:5;168:6;186:22; 187:8;191:4;193:12; 12;194:9;199:19; 202:5;205:23;214:16; 21,24;222:4;234:21; 238:17;240:25;243:21; 250:10,24;256:19; 266:25;272:22;293:9; 298:2;300:24;303:11; 308:5 surprise (3) 97:13;298:23,23 surprised (3) 156:8;160:17;278:20 surprises (3) 293:11;304:7,19 surprising (1) 64:23 surprisingly (1) 112:20 survive (2) 129:19;130:4 survivor (1) 215:7 survivors (5) 219:1,2,9,13,23 suspect (2) 91:15;185:3 Swain (1) 303:22 swamp (1) 153:5 switch (4) 48:23;64:4;199:18; 232:16 switched (2) 301:14,15 switching (2) 227:8;228:9 sympathetic (2)	38:18;90:5 system (5) 64:7;84:24;85:1; 226:24;279:10 T table (26) 72:15;136:8;141:1; 151:13;153:20,20; 160:3;168:25;181:6; 184:19,24;196:17; 213:3;215:18;229:23; 240:6,11;241:6,7; 245:12,14,15;251:13, 15;259:5;265:15 tactic (1) 80:3 talk (17) 31:24;84:8;111:16; 159:14;190:10;195:12; 207:18;227:6;232:13; 262:15;263:18;269:2; 273:13,23;286:3; 302:17;310:20 talked (5) 237:6;240:22;253:6; 255:14;278:15 talking (17) 43:16;92:19;122:2; 168:13;176:14;193:20; 199:23;201:13;210:19; 233:19,21;236:15; 238:18;239:5,6;269:7, 20 task (1) 181:8 TC- (1) 146:21 TCC (113) 9:19,21;10:8;11:19; 13:19;30:3;35:7;39:10; 94:9,23;96:19;97:17; 100:9,12;103:8;106:7; 108:24;116:14,25,25; 117:1;121:24;123:2; 125:20;127:8,10; 129:1,13,16,23;130:1, 20;131:2,4,13,13; 132:15;134:17;136:8; 139:5;144:19;145:5,6, 12;152:9,16,25;158:7, 9;160:7;161:10; 164:17;169:23;173:9, 14,25;180:7,10,12,13; 183:1;186:17;187:25; 190:12,15;191:1,1; 193:14,19;194:2,12; 195:10;197:16;204:19, 23;205:4;208:23; 214:1;215:8;219:10, 11;220:22;221:25; 222:16;224:12,15,24;	225:8;226:10;228:20; 231:5;237:3,3,7;251:6; 252:11;255:23;257:11; 259:20;260:13,15; 261:3,17;263:23; 265:25;266:1;278:18; 288:25;291:14;294:8, 10;298:6;303:3 TCCs (1) 260:2 TCC's (6) 96:21;153:24;225:2; 239:15;248:25;285:10 team (4) 71:1;243:22,23; 297:16 tear (2) 76:25;77:2 tearing (1) 77:17 technical (1) 309:2 technically (1) 298:6 Ted (2) 41:21;72:11 teed (2) 298:1;304:11 Tehama (1) 137:6 telling (3) 30:3;107:9;219:18 tells (2) 43:24;162:2 temporarily (3) 148:24;149:1,4 temporary (10) 127:15;147:13,14; 148:2;149:19,21,22,24; 152:18;223:17 ten (5) 23:16;24:3;42:22; 123:17;183:24 tenant (1) 202:13 tend (1) 29:24 tender (1) 14:9 tends (1) 266:18 tens (5) 152:10;192:13; 225:1;299:15;300:19 tents (1) 236:18 term (8) 11:8;21:16;113:24, 25;126:7;170:6; 180:23;208:4 terminate (5) 111:20;200:10,13; 232:4;291:16
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terminated (13) 65:7;67:23;73:17; 111:22;158:5;173:13; 174:19;190:3,4;197:3; 290:8,11;300:3	115:15;140:23; 145:2,4;157:17;158:5; 22;187:17;264:9; 286:24;289:12;292:20	thrilled (1) 242:9	256:13;257:2,3,16,18; 258:9;260:22,25; 262:22;266:20;269:21; 276:7;280:10,14; 285:10;286:6;289:3; 292:13;294:2,5;296:4; 298:4;300:8,9;302:6; 304:3,5;310:11	223:2,12;224:16; 225:1,7,7;228:7; 233:25;237:25;241:1; 243:6,7;277:6;278:7; 282:11;288:25;289:1, 22;292:2,4,21
terminates (1) 176:1	thirteen- (1) 277:12	throwaway (3) 112:8,11,12		torts (19) 189:21,21,24;190:5; 193:2;195:22;201:3, 10,12,24;205:8,20; 206:14;278:8,11,11,21; 279:8,22
terminating (1) 262:6	thirteen-and-a- (1) 189:7	thrust (5) 161:3,9;291:3,4,6		
termination (5) 104:12;108:21; 127:20;290:15;303:14	thirteen-and-a-half (4) 157:10;188:21; 191:12,14	Thursday (1) 260:1	today's (16) 8:21;25:15;31:1; 35:19,25;36:13;99:23; 108:13;109:1;116:18; 127:11,16;153:13; 155:14;214:20;215:4	
terminology (1) 60:11	thirteen-and-a-half- (1) 130:23	thwarts (1) 169:17		toss (2) 297:14,15
terms (35) 18:17;23:12;60:12; 76:18;107:3;123:10; 126:24;127:8,9; 143:19;159:18;160:24; 161:1;174:2;175:3; 179:2;180:15;199:13; 212:25;221:18;222:5, 11;232:9,9;234:10; 235:4,20;237:21; 244:20;246:3;250:9; 260:23;263:21;267:2; 278:10	thirteen-and-a-half-billion-dollar (4) 22:17;53:24;146:24; 187:24	tied (4) 22:5;247:6;265:15, 17	Todd (4) 9:9;61:18;62:9;66:9	total (1) 18:2
territory (1) 82:14	thirty (1) 142:18	till (1) 125:5	together (19) 13:15;104:18; 105:15;147:25;154:15; 176:15;186:2;216:10; 224:25;228:15;241:18; 243:19;253:14;265:12; 269:15;270:11,12; 272:12;275:6	totality (1) 179:13
test (1) 244:9	thirty-six (1) 201:24	timely (1) 291:22		touch (2) 193:3,4
tested (2) 64:14;216:20	thirty-two (1) 39:13	times (6) 107:13;137:5; 169:25;206:13;248:11; 288:16		touched (2) 160:7;293:15
testifying (1) 202:17	thirty-two-year-old (1) 12:21	timing (8) 19:7;25:14;59:4; 128:5;135:2;238:2; 240:2;258:7	told (23) 20:20;23:18;125:3,5; 126:5;134:4;138:1; 142:17;163:9;180:1,2; 185:9,25;230:14; 240:8;244:19;245:13; 249:11;253:3;258:17; 259:16;263:2;300:11	tough (4) 78:12;241:10;244:7; 295:22
tethers (1) 171:25	though (14) 17:18;19:7;23:2; 63:21;66:15;68:25; 80:14;82:15;119:20; 125:9;232:24;251:1; 280:12;306:25	tired (1) 288:13		toward (3) 37:8,14;248:3
Thanks (2) 164:24;167:1	thought (26) 17:20;29:9;63:24; 99:5;100:10;102:3; 121:16;127:12;137:13; 148:25;149:20;150:4; 168:7;185:11;191:16; 213:5;218:4;247:22; 251:18;266:13,25; 278:13;293:6,22; 307:18;309:21	title (5) 77:22,23;79:15;86:6, 13		towards (5) 44:3;205:20;215:10; 252:3;257:6
That'll (1) 119:23	thoughtful (1) 303:25	today (130) 8:10;10:10;12:17,23; 13:6;15:16;19:25; 21:12;22:18;25:18,19; 31:6;35:6,13;37:10; 41:12,24;42:3;43:11, 11;44:9;47:13;49:14; 57:22;58:18;87:4; 93:24;94:3,11;95:12, 20;96:22,24;98:11; 100:20;101:20;105:11; 108:8;109:16,16; 112:16;115:13;118:8; 120:16;125:19;127:7; 128:7;130:2,12; 134:15;135:12;136:8; 140:22;143:8;145:16; 146:4,10;149:15; 153:10;159:8,10; 162:1,18;164:14; 165:3,20;166:25; 167:6,7;171:8;172:21; 173:15;181:7;186:13, 19;204:16,22;205:6; 209:13;214:18,23; 215:5,18;216:13; 218:12,16;225:11,21; 229:9;231:8;237:24; 238:1,3;242:3;243:1; 248:14;250:2;251:5, 13,17,19;252:8;	tomorrow (3) 125:14;287:25; 304:13	tower (2) 18:2,14
theory (2) 67:21;215:15	thoughts (1) 293:10		took (12) 68:22;134:17;135:1; 137:6;138:4;166:12; 195:4;203:16;222:6, 17;259:14;298:1	town (2) 137:21;178:6
thereby (1) 147:22	thousands (12) 118:13;140:11; 152:10,11;168:19; 224:22;225:1,6;247:3, 5;299:15;300:19			track (5) 116:2;129:24,24; 144:9;159:24
therefore (12) 39:8;64:25;87:20; 97:15;161:12;170:12; 172:2;188:3;206:9; 207:18;293:22;309:2	threatened (1) 289:2		tool (1) 90:15	tracks (1) 173:11
there'll (1) 119:12	threatening (3) 203:6;288:24,25		toolbox (1) 90:15	tradeoffs (1) 139:3
thinking (8) 90:19;126:24; 140:12;141:5;185:14; 293:21;296:13;302:3	threatens (1) 86:13		top (2) 207:6;287:10	traditional (1) 59:15
third (3) 129:5,6;233:20	three (26) 8:12,16;10:11;19:4, 6;25:4,10;37:4;73:22; 76:6;95:15;107:13,14; 112:24;140:10;165:13; 166:13;223:5;235:2; 248:23;249:22;270:16; 294:14,16;310:16,17		topic (2) 233:6;265:5	tragedies (1) 300:19
third- (1) 294:23			topics (4) 48:23;64:4;199:18; 232:16	tragedy (2) 47:18;58:12
third-party (3) 294:7,7,19			tort (61) 10:3;11:14;104:9; 106:14,17,25;110:8; 111:18;113:2,3; 114:16;131:20;134:15, 16,20,20,21,24;135:4; 152:5;155:6;158:14; 163:8,10;165:15; 173:4;188:9;189:7; 197:16;201:8,12; 202:2;214:19;221:8, 12,13,20;222:2,13,20;	tragic (1) 58:10
thirteen (12)				trails (1) 308:9

transpire (1) 140:15	Troy (11) 127:23;164:2,5,5,12, 16,24,25;310:15,19,25	287:21,21;306:6	202:13	Um-hum (12) 49:2;52:22;55:16; 93:7;97:9;98:21; 172:25;182:15,18; 184:4;234:19;249:12
transpired (1) 239:16	true (23) 10:11;36:25;49:15; 57:1;58:7;64:1;66:1,2; 82:19,21;84:4;153:14; 178:16;192:21;245:13; 249:16;250:11,11; 264:11;267:24;295:2; 300:18;310:19	TSA (3) 127:18;261:1,2	twelve-month (1) 283:4	unable (2) 202:10;226:22
trap (2) 33:17;308:5	truly (2) 223:3;295:7	Tsekerides (136) 8:9,11,15,18,20;9:4; 23:23,31;23:41;10,15, 18,21,21;42:1,3,5;43:3, 5,8;44:2,5,7,12,16,20, 22;45:2,6,12,17,23,25; 46:9,11,14,17,21,25; 47:5,8,12,17,19,23; 48:3,6,10,13,19,24; 49:2,7,10,13,15,21,24; 50:12,14,16,19,21; 51:1,4,6,9,11,17,24; 52:3,8,15,20,22;53:6,9, 11,17,19;54:2,8,12,15, 21,23;55:6,8,11,13,16, 18,20,23,25;56:2,4,9, 11,16,19,23;57:1,3,5,8, 11,15,18,20,23;58:1; 60:5,17,20;61:1,3,6,8, 15;72:7,10,11,16,23; 73:4,7,10,12;74:5,7,16, 21,23,25;75:3;202:17	twelve-page (1) 276:6	unaware (1) 84:23
traps (2) 246:3;295:8	trust (81) 10:8,18;11:21;14:6, 18,21;15:3,12,15;19:3, 3;21:14;22:21;23:1; 25:6;27:5,9;30:7,8; 33:12,12;50:10,11; 51:12,23;52:2;53:4,16, 24;60:9;64:13;118:1,3, 3,13,23,25;119:5; 127:5,9;132:9;142:14; 144:20;145:2;146:12, 14,22,25;147:6,8,8,11; 151:12;154:6,11,13,17, 18;163:1,3,7,12,16; 173:6;181:9;202:1; 225:16,18,22;226:1,11; 229:7;249:14;252:21, 23,25;256:20;265:11; 271:20;289:8;309:5	turn (12) 11:22;95:6;101:9; 120:14;155:19;195:19; 215:12,17;241:20; 242:6;275:20;293:2	twenties (1) 286:10	uncertain (1) 244:20
travelers (1) 252:14	trustee (27) 14:6,9;22:4,5,6; 25:10;27:13;50:5,6,11; 52:11;53:5,15,17; 58:24;128:5,8,11; 144:25;155:5;165:2,3; 209:5;226:7,7;294:9; 297:7	turnarounds (1) 57:11	twenty (6) 135:5,21;276:5; 283:19;292:18;304:22	uncertainties (3) 209:14;228:15; 244:23
tread (2) 161:1;198:23	trusts (3) 146:13;147:6,7	turned (1) 111:24	twenty-one (2) 27:3;308:21	under (47) 24:5;27:3;31:6;32:5, 15;53:6,19;60:7,9,9; 63:17;68:5;76:11,18; 78:14;83:17;87:23; 90:6;105:21;108:4; 129:8;132:23;179:2; 182:11;188:10,19; 192:19;194:12;195:24; 200:12;201:7,23; 208:8;222:3;238:2; 239:23;252:24;259:14; 265:9;267:23;275:19; 292:9;293:14;295:25; 297:18;307:14;308:12
treat (1) 199:3	truth (2) 37:12;188:8	turning (1) 309:19	twenty-two (2) 68:20;307:20	undercard (1) 8:11
treated (3) 126:21;177:23;226:8	try (31) 14:7;26:17;32:12; 42:10;44:8;52:16;59:7; 68:25;71:21;77:21; 79:17,24;81:3;83:23; 87:1,2;99:22;178:3; 179:21;191:23;193:10; 197:9;206:14;207:5; 235:3,8;243:2;247:21; 254:25;266:16;288:7	Tuesday (2) 8:1;125:7	twice (2) 37:3;49:19	underhill (2) 294:17;295:2
treating (3) 51:22;52:4;126:19	trying (24) 33:15,17,19;34:15; 48:14;54:5;79:21;90:2; 115:1;120:4;121:8,8; 185:20;191:2;223:8; 241:8,14;249:10; 255:10;279:14;280:24;	tune (1) 112:24	two (65) 12:16;25:7;35:8; 36:19;42:5,6,25;43:1; 48:13;49:18;50:24; 52:17;56:9;58:25; 67:18;74:2,3,4,11,13; 90:25,25;91:22;93:3; 94:13,15;102:1;118:8; 124:12;131:20;140:13; 144:1,22;146:13; 147:7;148:10;165:18; 172:7;178:7;183:2; 187:23;190:4;197:18; 218:2;227:5;228:8; 232:4;235:2,9;249:17, 19;255:12;258:10; 259:6;264:24;266:21; 269:9;281:7;286:17; 287:1,6;299:8;302:7; 304:14;308:21	uncharted (1) 82:14
treatment (18) 96:23;110:9;126:13, 19;154:12;184:10; 185:2;188:9;190:25; 195:25;211:12;215:2; 217:21;222:2;289:19, 22,22,23	trustee's (2) 52:12;165:5	TUESDAY (2) 8:1;125:7	tying (2) 70:18;169:11	unconfirmable (6) 172:2,3;174:1;210:8; 284:11,14
tree (14) 249:7,10,19,21,23, 24;250:4,13;251:2; 252:9,12;254:5,6,10	trusts (3) 146:13;147:6,7	tunnel (1) 248:1	type (1) 51:20	Under (47) 24:5;27:3;31:6;32:5, 15;53:6,19;60:7,9,9; 63:17;68:5;76:11,18; 78:14;83:17;87:23; 90:6;105:21;108:4; 129:8;132:23;179:2; 182:11;188:10,19; 192:19;194:12;195:24; 200:12;201:7,23; 208:8;222:3;238:2; 239:23;252:24;259:14; 265:9;267:23;275:19; 292:9;293:14;295:25; 297:18;307:14;308:12
Trees (1) 249:18	truth (2) 37:12;188:8	turn (12) 11:22;95:6;101:9; 120:14;155:19;195:19; 215:12,17;241:20; 242:6;275:20;293:2	typical (1) 150:16	underlying (4) 77:9;84:25;169:11; 203:12
tremendous (2) 192:12;255:10	try (31) 14:7;26:17;32:12; 42:10;44:8;52:16;59:7; 68:25;71:21;77:21; 79:17,24;81:3;83:23; 87:1,2;99:22;178:3; 179:21;191:23;193:10; 197:9;206:14;207:5; 235:3,8;243:2;247:21; 254:25;266:16;288:7	turnarounds (1) 57:11	Typically (1) 151:17	undermine (2) 250:8;290:1
trial (61) 14:13;21:1;22:19; 24:2;26:6;30:18,23; 31:3;35:15,18;36:2,9; 37:16;41:1;42:12; 43:18;44:15;45:5;46:7, 12,15;47:6,20;49:8; 54:4;55:5;59:3;68:4; 79:21;80:4,14;86:7,9; 88:14,20;89:6,8,8; 90:2;92:2;110:23; 119:9,20;124:3; 132:13,20;137:6; 155:7;226:17;231:4; 233:11;236:20;244:18, 22;245:15;258:20,24; 261:22,25;262:4; 289:21	trustee's (2) 52:12;165:5	turned (1) 111:24	underpaying (1) 208:6	understanding (1) 98:24
triggered (1) 239:14	trusts (3) 146:13;147:6,7	turning (1) 309:19	U	understandable (1) 98:24
triggers (1) 33:3	trying (24) 33:15,17,19;34:15; 48:14;54:5;79:21;90:2; 115:1;120:4;121:8,8; 185:20;191:2;223:8; 241:8,14;249:10; 255:10;279:14;280:24;	tweak (1) 97:24	UCC (2) 169:12;228:5	understands (3) 33:10;122:25;222:4
trimmer (1) 249:10	try (31) 14:7;26:17;32:12; 42:10;44:8;52:16;59:7; 68:25;71:21;77:21; 79:17,24;81:3;83:23; 87:1,2;99:22;178:3; 179:21;191:23;193:10; 197:9;206:14;207:5; 235:3,8;243:2;247:21; 254:25;266:16;288:7	twelve (7) 168:8;263:5;276:8, 13;277:11;283:1; 286:10	UCC's (1) 248:19	Understood (9) 39:3,6;85:8;131:22, 25;142:7;148:22; 215:19;247:16
trimmers (2) 249:7;252:9	try (31) 14:7;26:17;32:12; 42:10;44:8;52:16;59:7; 68:25;71:21;77:21; 79:17,24;81:3;83:23; 87:1,2;99:22;178:3; 179:21;191:23;193:10; 197:9;206:14;207:5; 235:3,8;243:2;247:21; 254:25;266:16;288:7	twelve-billion-dollar (1)	ultimate (4) 179:15;181:16; 190:13;285:16	undertaken (1) 221:14
TRO (1) 252:11	try (31) 14:7;26:17;32:12; 42:10;44:8;52:16;59:7; 68:25;71:21;77:21; 79:17,24;81:3;83:23; 87:1,2;99:22;178:3; 179:21;191:23;193:10; 197:9;206:14;207:5; 235:3,8;243:2;247:21; 254:25;266:16;288:7	turn (12) 11:22;95:6;101:9; 120:14;155:19;195:19; 215:12,17;241:20; 242:6;275:20;293:2	Ultimately (12) 54:12;158:24;159:3, 8;180:14;199:16; 203:9;204:7,12; 256:21;258:10;309:13	underway (2) 73:21,22
trouble (2) 61:10;176:19	try (31) 14:7;26:17;32:12; 42:10;44:8;52:16;59:7; 68:25;71:21;77:21; 79:17,24;81:3;83:23; 87:1,2;99:22;178:3; 179:21;191:23;193:10; 197:9;206:14;207:5; 235:3,8;243:2;247:21; 254:25;266:16;288:7	turn (12) 11:22;95:6;101:9; 120:14;155:19;195:19; 215:12,17;241:20; 242:6;275:20;293:2	umbrella (1) 252:25	underwriters (1) 138:1

uneffective (1) 215:25	308:4;309:25	upfront (1) 269:15	191:3;199:12;201:9; 204:20;205:4,9,11; 206:17;228:14;233:12; 278:11;279:20,21,22	300:7,11,19
unequivocally (6) 60:2;171:12;172:1, 11;180:3;187:25	unprecedented (1) 276:13	upload (1) 301:25	valve (1) 237:22	victims' (3) 226:20;232:19;243:7
unfair (4) 27:12;37:2;118:9; 240:25	unreasonable (1) 275:9	upon (18) 58:25;59:3;60:3; 103:8;164:21;178:11, 12;183:7;190:23; 199:9;200:13,19; 201:11;202:8;271:9; 277:3;279:15;287:22	vaporize (1) 289:14	victim's (1) 163:3
unfamiliar (2) 178:9;194:15	unrelated (1) 180:24	upstairs (5) 122:15,16;135:15; 240:9;286:13	vaporizes (1) 289:13	view (32) 16:8;22:1;25:21; 79:25;90:18;98:3; 131:1;146:19;150:6; 163:9;224:21;232:19; 242:1;247:15;248:2, 25;250:2;251:25; 252:1;254:18;255:1,3; 260:17,18;277:24,25; 285:1;295:13;299:6; 300:8,13;304:10
unfolds (1) 292:19	unreported (1) 295:19	urging (2) 167:24;193:25	variables (1) 194:21	views (2) 76:17;130:16
unfortunately (1) 225:20	unrepresented (1) 72:13	use (17) 54:5;59:23;111:15; 126:6;136:1;139:24; 170:3,5,10,12;185:12; 244:9;253:12;286:16, 24;287:23;296:16	variations (1) 186:2	violating (3) 207:14;212:20,20
unhappy (1) 141:18	unresponded (1) 248:22	used (6) 43:25;126:7;173:22; 245:7;253:10;286:20	various (3) 164:6;225:11;302:6	virtually (3) 47:25;48:1;168:3
UNIDENTIFIED (7) 75:16,19;95:1; 273:15,18;274:2,6	unsafe (2) 62:8;65:8	urgency (1) 122:25	vast (6) 134:22;224:15; 243:18;245:7;274:22; 282:17	vis (8) 50:11,11;53:5,5; 54:19,19;208:7,7
unimaginable (1) 269:7	unsecured (6) 107:23;167:11; 180:16;231:16;308:8; 309:9	urging (2) 167:24;193:25	vendor (3) 169:14;171:9;186:10	vis-a-vis (1) 196:10
unimpaired (26) 97:19,21;105:1; 108:4;110:24;111:11; 177:23;195:24;210:22, 24;256:24;267:4,6,16, 17,23;280:11,12,14; 283:24,25;292:9; 297:23;301:9;307:21, 24	unsuccessful (1) 62:1	uses (1) 253:12	vendors (3) 250:25;252:7,10	visualize (1) 234:1
unimpairment (1) 211:13	unthought-out (1) 137:13	using (3) 201:3;205:18;309:16	verbatim (1) 286:9	Vlazakis (10) 8:15;74:25;75:11,21, 23;84:3,4,7,9;86:20
union (3) 63:11;72:4;73:14	unusual (2) 33:22;268:1	usual (2) 83:9,10	verdicts (1) 36:24	voice (6) 30:17;35:17;232:3; 267:7,8;274:24
unique (3) 65:13;66:3;77:8	unwary (1) 295:8	usually (2) 170:6;176:22	version (3) 15:10;231:11;239:23	volition (1) 274:6
UNISON (3) 8:7;311:2,6	unwrite (1) 59:8	Utilities (4) 128:15;140:11; 223:6;229:6	versus (6) 177:11;193:25; 215:3;262:11;296:19; 305:24	voluntary (2) 201:7;295:15
United (6) 127:23;128:5,8,11; 165:2;294:9	up (104) 9:22;10:18;23:24; 26:5;27:4;31:25;42:17; 43:13,18,25;44:10; 54:4;57:19;62:8;66:9; 80:24;82:2;89:7;90:22; 96:17;103:5;109:5; 111:9;118:23;126:17; 128:25;135:15;138:13; 142:13,18;146:3; 147:21,25;152:12; 154:2;159:24;160:4; 161:20;162:9;167:6; 171:4;180:9,11,25; 181:23;182:7;184:20; 188:5;189:5,9;190:23; 191:9,14,23;192:2; 194:2;199:15;204:13; 208:19;213:8;214:11; 216:17;218:25;228:2; 229:21;230:15;231:25; 232:12,23,25,25; 236:19;237:5;238:22; 247:4,6;248:11,21; 249:6;256:18;259:13, 24;264:24;265:10; 267:11;268:8,9,22; 276:7;277:12,17; 278:20;283:1;285:19; 287:18;290:3,3;294:8; 298:2,15;304:11; 306:1;307:9,11	utilization (1) 298:13	veto (5) 103:9,11,14,14,14	vote (26) 105:1;141:17,19; 153:3,5;172:8;177:13, 24;193:25;194:3,4,5,6, 10;195:6,7;197:20,21; 200:1;201:17;225:2; 233:2;234:25;236:22; 239:23;282:15
unknown (1) 219:2	unwound (1) 107:23;167:11; 180:16;231:16;308:8; 309:9	utterly (2) 178:8;275:1	victims (61) 10:13,15;14:22; 19:20;22:21;24:22; 27:21;30:3;47:16; 53:22,23;58:7;59:9; 101:2;118:9;126:14, 18;130:25;132:2; 140:19;142:10;143:6, 23;144:19;169:3; 170:18,21,23;171:22; 177:19,25;178:8; 199:21;215:3;223:12, 16;225:15,19;242:13; 243:6;247:3,6;249:15; 252:15;253:10,11; 256:7,10,18,22;257:6, 10;258:11;261:20; 281:17,17;299:16,24;	votes (6) 149:4;270:2,19; 271:13,13;284:25
unlawful (1) 295:23	unwound (1) 107:23;167:11; 180:16;231:16;308:8; 309:9	Valero (17) 11:17;13:11,13,16, 20;19:13;20:8,18,19, 22;21:5;25:7;42:20,20; 43:9;55:19,21	viability (1) 211:20	voting (17) 115:19;127:15; 146:11;148:3,18; 149:24;150:15;152:24, 24;153:12;163:20;
unless (26) 25:16;31:14;32:20; 36:7;49:8;59:5;80:7; 81:15;91:9;125:21; 130:3;131:9;135:23; 136:16;148:18;159:20, 23;166:24;182:25; 213:21;234:6;251:6; 271:16;283:25;296:7; 309:25	unwound (1) 107:23;167:11; 180:16;231:16;308:8; 309:9	Valero's (3) 20:24;25:9;26:23	victims (61) 10:13,15;14:22; 19:20;22:21;24:22; 27:21;30:3;47:16; 53:22,23;58:7;59:9; 101:2;118:9;126:14, 18;130:25;132:2; 140:19;142:10;143:6, 23;144:19;169:3; 170:18,21,23;171:22; 177:19,25;178:8; 199:21;215:3;223:12, 16;225:15,19;242:13; 243:6;247:3,6;249:15; 252:15;253:10,11; 256:7,10,18,22;257:6, 10;258:11;261:20; 281:17,17;299:16,24;	voted (1) 177:25
unlike (1) 21:4	unwound (1) 107:23;167:11; 180:16;231:16;308:8; 309:9	valuable (1) 189:4	victims (61) 10:13,15;14:22; 19:20;22:21;24:22; 27:21;30:3;47:16; 53:22,23;58:7;59:9; 101:2;118:9;126:14, 18;130:25;132:2; 140:19;142:10;143:6, 23;144:19;169:3; 170:18,21,23;171:22; 177:19,25;178:8; 199:21;215:3;223:12, 16;225:15,19;242:13; 243:6;247:3,6;249:15; 252:15;253:10,11; 256:7,10,18,22;257:6, 10;258:11;261:20; 281:17,17;299:16,24;	voter (1) 280:19
unlikely (4) 158:2;178:17;180:5; 196:25	unwound (1) 107:23;167:11; 180:16;231:16;308:8; 309:9	valuation (1) 241:1	victims (61) 10:13,15;14:22; 19:20;22:21;24:22; 27:21;30:3;47:16; 53:22,23;58:7;59:9; 101:2;118:9;126:14, 18;130:25;132:2; 140:19;142:10;143:6, 23;144:19;169:3; 170:18,21,23;171:22; 177:19,25;178:8; 199:21;215:3;223:12, 16;225:15,19;242:13; 243:6;247:3,6;249:15; 252:15;253:10,11; 256:7,10,18,22;257:6, 10;258:11;261:20; 281:17,17;299:16,24;	voters (7) 193:9;201:17; 280:24;281:12;282:5; 284:21,21
unliquidated (10) 33:2;148:25;149:3,9, 22,25;305:24;307:11;	unwound (1) 107:23;167:11; 180:16;231:16;308:8; 309:9	value (16) 157:18;158:14;	victims (61) 10:13,15;14:22; 19:20;22:21;24:22; 27:21;30:3;47:16; 53:22,23;58:7;59:9; 101:2;118:9;126:14, 18;130:25;132:2; 140:19;142:10;143:6, 23;144:19;169:3; 170:18,21,23;171:22; 177:19,25;178:8; 199:21;215:3;223:12, 16;225:15,19;242:13; 243:6;247:3,6;249:15; 252:15;253:10,11; 256:7,10,18,22;257:6, 10;258:11;261:20; 281:17,17;299:16,24;	votes (6) 149:4;270:2,19; 271:13,13;284:25
	upended (1) 299:17		victims (61) 10:13,15;14:22; 19:20;22:21;24:22; 27:21;30:3;47:16; 53:22,23;58:7;59:9; 101:2;118:9;126:14, 18;130:25;132:2; 140:19;142:10;143:6, 23;144:19;169:3; 170:18,21,23;171:22; 177:19,25;178:8; 199:21;215:3;223:12, 16;225:15,19;242:13; 243:6;247:3,6;249:15; 252:15;253:10,11; 256:7,10,18,22;257:6, 10;258:11;261:20; 281:17,17;299:16,24;	voting (17) 115:19;127:15; 146:11;148:3,18; 149:24;150:15;152:24, 24;153:12;163:20;

168:21;177:19;194:11; 195:5;210:14;211:25	135:24;138:21;141:15; 143:22;147:20;152:19; 177:7;178:22;181:12; 13;183:4;189:16; 193:11;194:17,17,18; 197:9;199:21;210:7, 15;212:21;213:8; 225:3;233:17;234:10; 237:1;239:13;244:12, 23;249:9;256:20; 257:9,25;263:4,9; 268:15;269:13;270:3, 10;271:9;272:10; 280:22;287:8,10; 289:6;291:20;293:21, 24;295:11,24;298:1; 299:9;307:15;309:17; 310:4	139:5;140:15;149:21; 153:20,20;168:11; 169:20;170:7;181:11, 17;184:7;190:2;191:6; 193:14;208:7;252:24; 282:7;287:23;298:14	willing (12) 18:2;35:16;39:19; 92:2,8,12,13;147:25; 152:17;158:21;201:10; 202:4 willingness (3) 153:24;265:14;290:2 wilted (1) 243:20 win (5) 245:1;287:8;297:13, 14,15 windfall (1) 112:24 winds (1) 139:15 wins (1) 287:7 WINTHROOP (1) 310:9 Winthrop (37) 121:5,6,13,13,20; 122:2,9;123:12;127:2; 143:12,15;144:8,10,13, 15,21;145:17;146:2,8, 15,17,21,23;147:1,4, 16;148:14,20,23; 149:6;150:24;151:1; 152:6;153:22,23; 309:12;310:7 Winthrop's (3) 151:10;152:14; 224:17 wisdom (2) 222:18;300:9 wish (10) 35:3;97:21;136:22; 163:15,17;186:19; 220:5;253:25;278:6,6 wished (1) 299:23 wishes (4) 62:19;126:16; 135:23;302:11 withdraw (4) 58:15;116:14,19; 143:8 withdrawn (2) 266:2,2 withhold (4) 125:1;141:20; 259:16;304:22 within (13) 12:5;69:3;83:10; 106:6;111:1;147:6; 154:12;191:10;223:8; 228:25;245:14;270:16; 307:20 without (33) 20:25;26:16;45:16; 46:5;58:24;60:10; 70:15,15;76:19;85:6; 87:4;98:2;122:13;	171:3;184:2;190:18; 193:17;204:23;205:16, 16;225:2;235:2,20; 240:5;241:12;244:10, 12,18;268:3;289:12; 290:5;297:23;303:3 won (2) 72:24;244:25 wonder (3) 58:15;78:21;81:6 wood (1) 181:3 word (12) 20:17;52:17;67:2; 112:11;126:6;169:24; 170:3,5;244:15; 246:12;249:16;256:23 worded (1) 106:16 words (30) 16:12;32:9;51:25; 60:6;78:18;81:3;88:4; 94:11;97:23;111:15; 115:1;119:10;174:19; 175:10;181:8;183:8; 193:10;200:12;206:18; 210:4;212:5;230:13; 234:11;235:13;244:10; 248:10;269:11;291:15; 298:6;307:24 work (23) 14:8;22:1;48:22; 54:25;60:21,23;68:23; 101:15;102:8;143:20; 147:25;153:1,3; 159:11;172:11;225:24; 255:10;265:12;272:12; 286:10;302:21;310:23; 311:4 worked (4) 186:17;225:20; 254:24;274:17 working (15) 48:14,22;56:12,24; 73:14;108:5;122:18, 21;123:24;153:25; 154:14;232:14;233:1; 270:11;304:5 works (5) 117:8;123:3;172:6; 178:22;269:14 world (8) 88:25;89:2;103:7; 183:17;224:11,11; 252:22;275:4 world's (1) 108:23 worries (1) 234:18 worry (6) 32:11;149:15; 151:15,17;234:20; 300:20
W				
wage (1) 69:7		whatsoever (1) 221:25		
wages (1) 68:21		wheel (2) 136:3;143:4		
wait (21) 27:12;31:9;35:10; 37:21;125:5;155:17; 162:2;194:8;197:14; 200:20;203:23;211:2; 253:22,22,22;259:16, 25;267:15;275:15; 304:4,4	ways (5) 59:14;172:6;242:6; 275:2;284:14	whenever (5) 46:10,12;58:14; 109:14;283:11		
waited (1) 25:5	week (11) 38:14,15;83:10; 107:21;119:4;159:7; 164:14;247:19;260:9; 302:15;304:18	When's (1) 89:11		
waiting (8) 19:4,5;22:9;42:16, 18;106:19;125:18; 223:12	weeks (18) 74:4,11,13;90:25,25; 91:22;93:3;134:17; 167:23;175:3;205:24; 225:21;255:12;259:15; 268:17;293:14,16; 294:22	whereby (1) 14:24		
waive (1) 127:19	Weil (2) 41:21;288:7	where's (1) 67:6		
waived (1) 127:21	weird (1) 210:10	Whereupon (1) 311:7		
waiver (1) 68:3	Weiss (1) 166:21	wherever (1) 179:7		
wake (1) 181:23	Weissmann (1) 20:18	wherewithal (1) 245:14		
walk (9) 191:2;193:13,16; 261:8,21,23;262:1,3; 287:5	welcome (2) 95:22;310:22	wherewithals (1) 246:3		
wall (8) 76:24;77:2,17;80:6, 15,21;82:23;83:3	well- (1) 59:20	whichever (1) 100:22		
wants (23) 33:23;76:25;89:23; 126:21;127:8;152:13; 158:4;171:5;186:5; 191:11;213:14;227:22; 228:4,5;234:4;258:1,2; 270:4;271:17;288:21; 297:3,3,5	well-capitalized (1) 222:10	whirlwind (1) 181:21		
waste (1) 254:9	well-established (1) 67:12	whistleblower (7) 62:7,19;64:21;65:12; 67:22;69:2;70:15		
Watts (1) 243:17	Wendy (1) 13:1	whistleblowers (1) 67:16		
way (95) 12:1;18:5;19:19; 25:2;26:17;28:11; 32:12;38:22;43:9; 45:15;46:15;50:20; 52:16;53:1;54:8;59:17; 64:14;65:24;66:6; 70:24;73:14;76:25; 78:4;85:5;87:2,10,18; 96:24;99:22;100:12; 101:10;102:9;106:5,8; 113:6;115:10,12; 120:21;126:8,23;	weren't (5) 52:3,4;62:23;85:11; 99:1	whistles (1) 219:16		
	Wharton (1) 166:22	whole (19) 21:13;47:8;61:22; 73:16;100:2;107:25; 113:10;121:18;130:10, 11;133:12;157:20; 180:16;201:4;247:11; 283:22;289:25;294:13; 309:10		
	what's (32) 15:17;17:21;21:24; 38:11;44:13;49:22; 74:8;80:6;94:1;95:6; 97:2;122:14;134:5;	whoops (1) 173:19		
		Who's (2) 9:13;61:16		
		whose (6) 118:17;230:1; 252:10;292:8;299:14, 16		
		wildfire (17) 10:13,15;14:22;30:3; 32:4;58:9;64:13; 171:22;178:8;219:1,2, 8,13,22;223:15; 250:24;291:23		
		wildfires (5) 28:12;55:4;58:8; 99:13;299:18		

worse (7) 76:23;79:2;88:22,23; 189:21;297:6;299:24	303:18,20,22,22,23, 24;304:6,12,24;308:7, 7,18	97:12	20,000 (1) 139:14	
worth (6) 137:20;143:24; 188:10;204:9;242:1; 299:13	1	12th (1) 150:7	20.9 (1) 250:23	4
worthy (1) 244:5	1 (9) 8:23;76:8,8,10;88:7; 95:8;123:22;135:15; 136:9	13.5 (33) 10:16;158:25; 161:11,17,24;171:8; 184:19,20;194:17; 201:11,16,22;202:1; 203:21;204:13,22; 206:19;208:15,17; 240:6,11,14;242:7,11; 247:12;249:1;256:20; 259:2,3;263:23;287:4, 19,23	2011 (1) 295:19 2015 (2) 28:11;223:13 2016 (4) 11:3;18:3;34:11; 223:14 2017 (3) 28:11;84:15;223:15 2018 (2) 28:11;223:15 2019 (4) 8:1;143:6;203:1; 269:8 2020 (3) 111:1;223:7;250:20 2021 (1) 250:21 20th (3) 91:21;93:9;226:1 23 (3) 16:22,24;17:5 24th (2) 89:14;92:11 2a (1) 117:7 2E (2) 270:9,15	4 (4) 76:7;77:1,2;80:5 4.19fii (1) 120:25 4:20 (1) 254:9 400 (1) 148:1
wounds (1) 247:22	1.7 (1) 23:19	13.5-billion-dollar (1) 217:18		5
wrap (1) 57:19	1:36 (1) 136:11	13.5-million-dollar (1) 171:4		5 (2) 20:22;119:11 5:30 (1) 309:14 5:32 (1) 311:7 5123 (1) 162:22 5154 (1) 277:22
wreck (1) 285:18	1:45 (1) 136:10	13-5 (1) 241:6		6
write (1) 212:5	100 (2) 168:13;199:23	139,000-acre (1) 137:9		6,000 (1) 38:16 6th (3) 91:17,21;93:6
written (3) 108:6;293:18;302:2	100,000 (1) 139:11	13th (2) 195:12;284:3	3	7
wrong (18) 87:7;90:13;112:11; 114:25;139:18;173:21; 181:11;195:18;218:19; 237:23;240:14,15; 272:15;282:7;284:1,2; 288:23;301:3	1054 (44) 96:4;104:2,16; 105:17;106:6;109:5; 112:6;118:16;129:9; 135:2;169:16;172:2; 186:15,18,20;192:18, 19;194:25;195:1,10; 201:20;209:20;215:23; 221:24;223:5;235:2,5, 7;237:6;238:8;239:9; 249:2;255:1,3,13; 256:16;258:16;259:7; 263:16;268:19;278:19; 279:5;283:17;291:22	14 (1) 237:17 14.5 (1) 247:12 14th (5) 116:7,8;302:16,19; 306:11 15 (1) 139:14 16 (1) 203:20 17 (4) 8:1;237:4,11,12 17.5 (1) 209:6 17th (1) 49:1 18 (1) 286:19 19 (5) 237:10,14,15,17; 251:7 1990 (1) 295:1 1993 (1) 295:1 1995 (1) 137:6 1997 (1) 295:11		
wrongfully (1) 73:17	1054's (2) 49:4;238:2	2		
wrote (2) 176:20;248:13	11 (15) 34:10;48:15;57:13; 105:24;110:9;150:17; 168:22;171:8;197:24; 233:13;259:11;264:5; 266:24;289:7;291:25	2 (4) 76:8,10;88:7;123:23 2.2 (1) 27:1 20 (1) 92:10		
Y	110 (3) 168:13;263:10,11 1114 (1) 194:24 1125 (2) 177:17;184:3 1129 (2) 105:7;182:11 1129b (2) 206:9,12 11s (1) 264:9 12 (1) 268:10 12.5 (1) 247:12 12:28 (1) 136:11 12:30 (1) 8:24 12:44 (1)			
year (9) 18:3;22:10;40:20; 42:13;45:20;47:21; 120:21;262:15;269:7	110 (3) 168:13;263:10,11 1114 (1) 194:24 1125 (2) 177:17;184:3 1129 (2) 105:7;182:11 1129b (2) 206:9,12 11s (1) 264:9 12 (1) 268:10 12.5 (1) 247:12 12:28 (1) 136:11 12:30 (1) 8:24 12:44 (1)			
year-long (1) 72:4	1114 (1) 194:24			
years (11) 12:22;19:4,6;37:4; 39:13;68:21;137:5; 235:2,9;248:12;264:9	1125 (2) 177:17;184:3			
Year's (2) 91:12,19	1129 (2) 105:7;182:11			
yelled (1) 244:8	1129b (2) 206:9,12			
Yep (1) 19:12	11s (1) 264:9			
yesterday (10) 96:19;97:12;104:10; 111:14;112:5;137:21; 255:21;272:14;293:19; 298:25	12 (1) 268:10			
young (1) 39:15	12.5 (1) 247:12			
Z	12:28 (1) 136:11 12:30 (1) 8:24 12:44 (1)			
Zipes (10) 165:4,4,7,8,10;166:5, 7,9,10,11				
ZUMBRO (12)				

39:21,23 900,000-plus (1) 39:20 9019 (4) 179:19;199:3;242:6; 272:11 9th (1) 294:13				
---	--	--	--	--